FILED

DEC 10 1991

Richard M. Lawrence, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EARL WAYNE LOCHMAN,

Defendant.

Civil Action No. 91-C-138-B

NOTICE OF DISMISSAL

COMES NOW the United States of America by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, Plaintiff herein, through Kathleen Bliss Adams, Assistant United States Attorney, and hereby gives notice of its dismissal, pursuant to Rule 41, Federal Rules of Civil Procedure, of this action with prejudice. This debt has been discharged in Chapter 7 Bankruptcy.

Dated this 10th day of December, 1991.

UNITED STATES OF AMERICA

TONY M. GRAHAM
United States Attorney

KATHLEEN BLISS ADAMS
Assistant United States Attorney
3600 United States Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

CERTIFICATE OF SERVICE

This is to certify that on the 10th day of December, 1991, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: Thomas H. Wagenblast, Esq., 4143 E. 31st St., Suite B, Tulsa, Oklahoma 74135.

Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LAURA STEWART,

Plaintiff,

vs.

TRANSPORT LIFE INSURANCE CO.,

Defendant.

No. 91-C-663-E

ORDER AND JUDGMENT

This matter is before the Court on Defendant's Motion for Summary Judgment and Plaintiff's Motion for Enlargement of Time to Further Respond to Defendant's Motion for Summary Judgment. Because the Court finds that material presently before the Court is dispositive of this matter the Court finds that the supplementary information referenced in Plaintiff's affidavit in support of her motion is unnecessary; therefore Plaintiff's motion will be denied.

Where, as here, there is no dispute as to any material fact and it is clear from the law and the record that the moving party is entitled to judgment, then summary judgment under Fed.R.Civ.P. 56(c) should be granted. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). In the instant case, it is undisputed that Plaintiff misrepresented her weight on her application for insurance coverage; that her true weight rendered her an "unacceptable risk" pursuant to Defendant's underwriting guidelines. Therefore the misrepresentation was material and the Defendant could permissibly deny Plaintiff coverage and rescind the policy. See, 12 O.S. §3609. Further, under relevant case law it

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is not material whether applicant Plaintiff submitted the false information on her own volition or at the instance of and in collusion with an agent of Defendant. See, Mutual Life Ins. Co. of New York v. Bohlman, 328 F.2d 289 (10th Cir. 1964); Dennis v. William Penn Life Ins. Co. of America, 714 F.Supp. 1580 (W.D. Okla. 1989); Vaughn v. American National Insurance Company, 543 P.2d 1404 (Okla. 1975). The Court is not persuaded by Plaintiff's assertion that the above-cited case law is distinguishable from the instant matter on the issue at bar. Further, the Court will not be heard to ratify a fraud. See, Mutual Life Ins. Co. of New York v. Hilton-Green, 241 U.S. 613, 36 S.Ct. 676 (1916). The Court finds, then, that Defendant has sustained its burden; that the issue raised is dispositive and renders other pending issues moot.

IT IS THEREFORE ORDERED that Defendant's Motion for Summary Judgment is granted; Plaintiff shall take nothing from Defendant; this action is hereby dismissed on the merits.

ORDERED this 10TH day of December, 1991.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

MATTHEW J. SETTLEMIRE,

Plaintiff,

vs.

RESOLUTION TRUST CORPORATIION as Receiver for Chisholm Federal Savings & Loan Association, and S&S RECOVERY, INC., an Oklahoma corporation,

Defendants,

Civil Action No. 91-C-710-B

CHISHOLM FEDERAL SAVINGS & LOAN ASSOCIATION,

Third-Party Plaintiff,

vs.

JENNIFER SETTLEMIRE,

Third-Party Defendant.

STIPULATION OF DISMISSAL

PURSUANT TO FRCP 41(a)(1)(ii), the parties hereto, less and except JENNIFER SETTLEMIRE, Third-Party Defendant, who was not served with summons and did not enter an appearance herein and whose stipulation hereto is not required, hereby stipulate that this action should be dismissed as to all claims, counterclaims and third-party claims now pending and request the Clerk to enter a dismissal as to all claims, with the claim of the plaintiff against the defendant, S&S Recovery, Inc., only, dismissed with prejudice.

DATED, this 28th day of November, 1991.

BRADSHAW & BRADSHAW

By _____
Scott W. Bradshaw OBA 1057
Attorneys for Plaintiff
1717 East 15th Street
P.O. Box 14130
Tulsa, Oklahoma 74159
918/749-3338

BOESCHE, McDERMOTT & ESKRIDGE

By _____
Bradley K. Beasley OBA #628
Attorneys for Resolution Trust Corporation
100 West 5th Street, Ste. 800
Tulsa, Oklahoma 74103
918/583-1777

BROWN & BRECKINRIDGE

By _____
Robert G. Brown
Attorneys for S&S Recovery, Inc.
500 West 7th St., Ste. 150
Tulsa, Oklahoma 74119
(918) 582-5141

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOSEPH DONALD COLE, by and through his mother and next friend,Virginia Cole,

Plaintiffs,

v.

Case No. 85-C-439-E

ROBERT FULTON, individually, **JULIA TESKA,** individually, **JAMES BORREN,** individually, **HAROLD E. GOLDMAN,** individually, **LUIS A REINOSO,** individually **JOHN DENTIST,** individually and **JANE DOCTOR,** individually,

Defendants.

SCOTT FURMAN MAXEY, a minor, by and through his next friend, Dianna Maxey,

Plaintiffs,

v.

Case No. 85-C-438-E

ROBERT FULTON, individually, **JULIA TESKA,** individually, **JAMES BORREN,** individually, **HAROLD E. GOLDMAN,** individually, **LUIS A REINOSO,** individually **JOHN DENTIST,** individually and **JANE DOCTOR,** individually,

Defendants.

JUDGMENT

In accordance with the Order entered on this 10th day of Dec., 1991, awarding Plaintiffs' counsel, Bullock & Bullock, base attorney fees and expenses, the Court

hereby enters judgment in favor of Plaintiffs' counsel, Bullock & Bullock, in the amount of $ 9,745.00 for base fees and $ 1,165.00 for expenses.

ORDERED this 10th day of Dec., 1991.

BY JAMES O. ELLISON

JAMES O. ELLISON
United States District Court

Louis W. Bullock
BULLOCK & BULLOCK
320 South Boston, Suite 718
Tulsa, Oklahoma 74103-3708
(918) 584-2001

Frank Laski
Judith Gran
PUBLIC INTEREST LAW CENTER OF PHILADELPHIA
125 South Ninth Street, Suite 700
Philadelphia, Pennsylvania 19107
ATTORNEYS FOR PLAINTIFFS

Charlie Waters
Roger Stuart
DEPARTMENT OF HUMAN SERVICES
P. O. Box 53025
Oklahoma City, Oklahoma 73152
(405) 521-3638
ATTORNEY FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

RMP CONSULTING GROUP, INC., and RMP SERVICE GROUP, INC.,	)	
Plaintiffs,	)	
vs.	)	Case No. 91-C-184 E
BELL ATLANTIC TRICON LEASING CORPORATION,	)	
Defendant.	)	

STIPULATED JUDGMENT

NOW, on this 10th day of Dec, 1991, there comes on for consideration the Motion for Entry of Stipulated Judgment filed herein by RMP Consulting Group, Inc. and RMP Service Group, Inc. (collectively, "RMP"), and Bell Atlantic Tricon Leasing Corporation ("Bell"). RMP appears by and through its counsel of record, J. Daniel Morgan, and Bell appears by and through its counsel of record, Gary A. Bryant and Kevin M. Coffey.

The Court FINDS that the parties have stipulated, as evidenced by the signatures of the respective counsel set forth hereinbelow, to the terms of this judgment which are incorporated by reference in that Motion for Entry of Stipulated Judgment filed herein on December 5, 1991. Based upon the Motion for Entry of Stipulated Judgment, the Court FINDS as follows:

1. This action was filed on March 22, 1991, by RMP seeking declaratory, injunctive, and monetary relief against Bell based upon RMP's acquisition at foreclosure sale from Bank of

Oklahoma, N.A., of inventory, equipment, and chattel paper, formerly owned by CopyTech Systems, Inc.

2. RMP complained that Bell had interfered with payments to RMP from certain equipment lessees, threatened to interfere with RMP's receipt of future payments, and that it had wrongfully asserted an interest in equipment which had been purchased by RMP through the foreclosure process.

3. On April 15, 1991, Bell filed its Answer and Counterclaim in the case, denying the material allegations of the Complaint, and sought declaratory, injunctive, and monetary relief against RMP, claiming that its interest in certain leases described on Exhibit "B" to its Counterclaim, including not only the right to receive lease payments thereunder, but also the residual interest in any equipment leased thereunder, was prior and superior to any right claimed by RMP. The leases owned by Bell and which are the subject of the disputed claims are described on Schedule "1" attached to this Judgment, and are hereinafter collectively referred to as the "Bell Leases". The lessees under the Bell Leases are collectively referred to as the "Bell Lessees".

4. The parties have now stipulated that the following judgment should be entered in this case.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

1. RMP is hereby determined to have no right, title, or interest in and to the Bell Leases, including any lease payments

thereunder or any equipment leased thereunder, or any residual interest in equipment after termination of the Bell Leases.

2. RMP should be, and hereby is, permanently enjoined from contacting any Bell Lessee with respect to providing service on any of the equipment provided under the Bell Leases or to interfere with Bell's rights to collect payments under any of the Bell Leases, or Bell's rights to repossess or take possession of, in any way, any of the equipment provided under the Bell Leases.

3. RMP shall account for and deliver to Bell within ten (10) days the following equipment:

a. 1 SF-8800 Sharp Copier, Serial No. 96201012;

b. 1 SF-S11 15-Bin Sorter, Serial No. 90506050;

c. 1 SF-A11N Automatic Document Feeder, Serial No. 9650549X; and

d. 1 Copy Cabinet

- possession of which has been obtained from First Title and Escrow Services, Inc., one of the Bell Lessees or shall, in lieu thereof, pay to Bell the sum of $1,200.00.

4. RMP shall account to Bell within ten (10) days, by certification of its Chief Executive Officer, that it has not received any funds attributable to payments made under any of the Bell Leases or any so-called Copier Management Programs relating to the Bell Leases, and to the extent that any such payments have been made, but not tendered to Bell, RMP should be, and hereby is,

directed to tender such funds to Bell at the time of such accounting.

5. RMP should be, and hereby is, permanently enjoined from bringing any action or other legal proceeding against any Bell Lessee relating to any alleged Copier Management Program agreement covering equipment which is the subject of any Bell Lease.

6. RMP should be, and hereby is, directed to execute the form of letter described on Schedule "2" hereto directing that the Bell Lessees make their lease payments to Bell, clarifying that RMP is making no claim against the Bell Lessee with respect to the leased equipment provided thereunder or under any Copier Management Program with respect thereto, and further disclaiming any right, title, or interest in and to any of the equipment which is the subject of the Bell Leases.

7. RMP shall be permitted to contact any Bell Lessee only if such lessee has a separate lease with RMP to enforce its rights under such separate lease or Copier Management Program; provided, however, that such contact or enforcement shall not interfere with any of the Bell Leases.

8. RMP should be, and hereby is, permanently enjoined from attempting to solicit or encourage any Bell Lessee to trade in or upgrade any equipment provided under the Bell Leases, or otherwise interfere with Bell's outstanding lease relationship with the Bell Lessees.

9. Each party hereto shall bear its own costs, expenses, and attorneys' fees.

IT IS SO ORDERED.

ST JAMES H ELLISON

UNITED STATES DISTRICT JUDGE

Approved for Entry:

By: J. Daniel Morgan
J. Daniel Morgan OBA #10550

Of the Firm:
GABLE & GOTWALS, A P.C.
15 W. 6th Street, Suite 200
Tulsa, Oklahoma 74119-1217
(918) 582-9201

ATTORNEYS FOR RMP CONSULTING GROUP, INC. AND RMP SERVICE GROUP, INC.

By: Gary A Bryant
Gary A. Bryant OBA #1263

Of the Firm:
MOCK, SCHWABE, WALDO, ELDER,
REEVES & BRYANT
A Professional Corporation
Fifteenth Floor
One Leadership Square
211 North Robinson
Oklahoma City, OK 73102
(405) 235-5500

ATTORNEYS FOR BELL ATLANTIC TRICON LEASING CORPORATION

06\batl.JUD [490-813]

SCHEDULE "1"

BELL-ATLANTIC/COPYTECH SYSTEMS, INC.

Summary of Purchased Chattel Paper

Lease #	Lessee	Lease Purchase Date	Term
7024600	Eastern Heights Baptist Church	12/01/88	60 mos.
7024608	Viola Baptist Church	12/01/88	60 mos.
7045170	Rural Route Tours International	10/25/89	60 mos.
7045492	American Italian Pasta Co., Inc.	10/30/89	36 mos.
7046280	Central Parking Systems	12/06/89	48 mos.
7046574	Dover Resources, Inc. d/b/a Norris Sucker Rod	11/16/89	60 mos.
7047165	Springdale School District - Central Junior High	11/28/89	60 mos.
7047374	Monett Area Vocational/Technical School	12/22/89	60 mos.
7047476	Mayflower Contract Service	12/04/89	60 mos.
7047484	First Church of the Nazarene	12/04/89	60 mos.
7047485	Pryor Printing, Inc.	12/04/89	60 mos.
7047599	International Business Machines	12/05/89	36 mos.
7047701	Diane Zemke d/b/a Zemke's One Stop	12/06/89	36 mos.
7047788	Waste Management of Kansas City	12/07/89	60 mos.
7047963	Purdy R-11 School District	12/11/89	60 mos.
7048158	City of Cabool	12/13/89	60 mos.
7048331	Tulsa Radiology Associates	12/15/89	60 mos.

Lease #	Lessee	Lease Purchase Date	Term
7048346	Superior Industries, Inc.	12/15/89	60 mos.
7048537	The G.C. Broach Company	12/19/89	60 mos.
7048737	Midland Brake, Inc.	12/22/89	36 mos.
7049127	Sauk Southwest Steel Co.	12/29/89	60 mos.
7049170	HTB, Inc.	01/02/90	60 mos.
7049454	Yellville-Summit School District	01/05/90	60 mos.
7049632	Auto Crane Company	01/09/90	60 mos.
7049633	Roger Boeger d/b/a Boeger Financial Group	01/09/90	60 mos.
7049820	Tilden Corporation	01/11/90	60 mos.
7050001	Sandven & Associates, Inc.	01/15/90	60 mos.
7050021	Junior Achievement of Greater Tulsa	01/15/90	60 mos.
7050098	Second Baptist Church	01/16/90	60 mos.
7050294	Spokane R-VII Schools	01/18/90	60 mos.
7050295	Higher Dimensions Evangelistic Center, Inc.	01/18/90	60 mos.
7050525	Drexel R-IV School District	01/23/90	60 mos.
7051072	Oswego Medical Corporation d/b/a Oswego Medical Clinic	01/30/90	60 mos.
7051333	Washington County Regional Juvenile Center	02/02/90	36 mos.
7051436	Miller School District	02/05/90	60 mos.
7051707	Wilkinson & Monaghan, Inc.	02/08/90	60 mos.
7051749	Lawrence County Commissioners Office	02/08/90	60 mos.

Lease #	Lessee	Lease Purchase Date	Term
7052011	Tran Am Systems, Inc.	02/13/90	60 mos.
7052127	Braden Manufacturing	02/14/90	36 mos.
7052226	County of Labette, Kansas	02/15/90	60 mos.
7052417	Barry - Lawrence County Ambulance District	02/20/90	60 mos.
7052418	Bartlett Memorial Medical Center, Inc.	02/20/90	60 mos.
7052420	Life Alternative, Inc.	02/20/90	60 mos.
7052530	The Centennial Life Insurance Co.	02/21/90	60 mos.
7052554	Aptus	02/21/90	60 mos.
7052634	Barkley & Evergreen of Kansas City, Inc.	02/22/90	60 mos.
7052667	Ozark Steel Fabricators, Inc.	02/22/90	36 mos.
7052766	First Title & Escrow Services, Inc.	02/23/90	60 mos.
7052833	Stillwell Schools	02/26/90	60 mos.
7052849	Pryor Foundry, Inc.	02/26/90	60 mos.
7053064	Superior Industries, Inc.	02/28/90	60 mos.
7053067	Arkansas Valley State Bank	02/28/90	60 mos.
7053068	Mark Twain School R-8	02/28/90	60 mos.
7053095	Yates, Mauck, Bohrer, Elliff & Croessmann, P.C.	02/28/90	60 mos.
7053097	Dover Elevator Company	02/28/90	60 mos.
7053236	Tulsa Boys Home	03/02/90	60 mos.
7053240	Northeast Area Votech Center	03/02/90	60 mos.
7053550	Comfort, Lipe & Green, P.C.	03/07/90	60 mos.

Lease #	Lessee	Lease Purchase Date	Term
7053649	Spectrum Auto Sales	03/08/90	36 mos.
7053834	Tamko Asphalt Products, Inc.	03/12/90	36 mos.
7054097	Spears Manufacturing	03/14/90	60 mos.
7054102	St. Francis Xavier School	03/14/90	60 mos.
7054171	Harp's Food Stores Price Cutter No. 108	03/15/90	36 mos.
7054286	The Redemptorist Father School	03/16/90	60 mos.
7054289	Sefco, Inc.	03/16/90	60 mos.
7054290	Turnpike Transit, Inc.	03/16/90	60 mos.
7054625	Stone County Health Center	03/21/90	60 mos.
7054986	H. Wayne Davis d/b/a Minuteman Press of Olathe	03/27/90	36 mos.
7054988	Liberty Grove Christian Center	03/27/90	60 mos.
7055028	Ozark County Courthouse	03/27/90	60 mos.
7055087	Webco Industries	03/28/90	60 mos.
7055428	Alpena Public Schools	04/02/90	60 mos.
7055546	Tulsa Firefighters Local 176	04/03/90	60 mos.
7055640	First State Bank of Springdale	04/04/90	60 mos.
7055939	Federated Rural Electric Insurance Corp.	04/09/90	60 mos.
7056581	Gregory & Brenda Maycock (Indian Point Lodge)	04/18/90	36 mos.
7056582	Synergy House, Inc.	04/18/90	60 mos.
7056773	Hurley School R-1	04/20/90	60 mos.

Lease #	Lessee	Lease Purchase Date	Term
7056791	Leggett & Platt, Inc.	04/20/90	60 mos.
7056876	Sam A. Mason, CPA	04/23/90	60 mos.
7056938	C.P. Annie Productions, Inc.	04/23/90	36 mos.
7057045	Bacone College	04/25/90	60 mos.
7057325	Baptist Bible College	09/30/90	60 mos.

Schedule "2"

Bell Atlantic Letterhead

Form of Letter

[Dear Bell Lessee]

Re: CopyTech Systems, Inc. Lease No. _____

In the past, you may have received a letter from RMP Consulting Group, Inc., or RMP Service Group, Inc., (collectively, "RMP") implying or inferring that RMP claimed an interest in the equipment which was leased to you by CopyTech Systems, Inc. and which lease was assigned and sold to Bell Atlantic Tricon Leasing Corporation ("Bell Atlantic"). The letter may have also implied or inferred that RMP claimed an interest in the lease payments which you have been sending to Bell Atlantic.

This letter is intended to clarify any misunderstanding in that regard. Notwithstanding any letter which you have may received to the contrary in the past, RMP makes no claim whatsoever to any of the equipment which you have leased from Bell Atlantic or any payments which have, in the past, been made to Bell Atlantic or which are required to be made under the terms of your lease with Bell Atlantic.

Furthermore, RMP makes and will make no claim for any payments which may have been due to CopyTech Systems, Inc. under any copier management program with respect to any equipment under your Bell Atlantic lease.

This letter is being sent pursuant to a judgment rendered in the United States District Court for the Northern District of Oklahoma in an action between RMP and Bell Atlantic. We hope this clears up any confusion which may have existed. We apologize for any inconvenience which you may have been caused.

Respectfully submitted,

BELL ATLANTIC TRICON LEASING
CORPORATION

By:_____

RMP CONSULTING GROUP, INC.
RMP SERVICE GROUP, INC.

By:_____
Henry Doss

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOSEPH DONALD COLE, by and through his mother and next friend, Virginia Cole,

Plaintiffs,

v.

ROBERT FULTON, individually, **JULIA TESKA**, individually, **JAMES BORREN**, individually, **HAROLD E GOLDMAN**, individually, **LUIS A. REINOSO**, individually, **JOHN DENTIST**, individually, and **JANE DOCTOR**, individually.

Defendants.

Case No. 85-C-439-E

SCOTT FURMAN MAXEY, a minor, by and through his next friend, Dianna Maxey,

Plaintiffs,

v.

ROBERT FULTON, individually, **JULIA TESKA**, individually, **JAMES BORREN**, individually, **HAROLD E GOLDMAN**, individually, **LUIS A. REINOSO**, individually, **JOHN DENTIST**, individually, and **JANE DOCTOR**, individually.

Defendants.

Case No. 85-C-438-E

ORDER

Plaintiffs' counsel, Bullock & Bullock, have filed a Plaintiffs' Application for Attorney Fees for an award of attorney fees and expenses.

The Court has reviewed the application for fees and approved the Stipulation of the parties.

The Court hereby awards the firm Bullock & Bullock base attorney fees in the amount of $ 9,745.00 and out-of-pocket expenses in the amount of $ 1,165.00.

IT IS THEREFORE ORDERED that the Department of Human Services shall pay Plaintiffs' counsel, Bullock & Bullock, base fees in the amount of $ 9,745.00 and expenses in the amount of $ 1,165.00, pursuant to the Judgment entered this day.

ORDERED this 10th day of Dec, 1991.

S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Court

Louis W. Bullock
Patricia W. Bullock
BULLOCK & BULLOCK
320 South Boston, Suite 718
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(918) 584-2001

Frank Laski
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ATTORNEYS FOR PLAINTIFFS

Charlie Waters
Roger Stuart
DEPARTMENT OF HUMAN SERVICES
P. O. Box 53025
Oklahoma City, Oklahoma 73152
(405) 521-3638
ATTORNEYS FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JOSEPH DONALD COLE, by and through his mother and next friend,Virginia Cole,

Plaintiffs,

v. Case No. 85-C-439-E

ROBERT FULTON, individually, **JULIA TESKA,** individually, **JAMES BORREN,** individually, **HAROLD E. GOLDMAN,** individually, **LUIS A REINOSO,** individually **JOHN DENTIST,** individually and **JANE DOCTOR,** individually,

Defendants.

SCOTT FURMAN MAXEY, a minor, by and through his next friend, Dianna Maxey,

Plaintiffs,

v. Case No. 85-C-438-E

ROBERT FULTON, individually, **JULIA TESKA,** individually, **JAMES BORREN,** individually, **HAROLD E. GOLDMAN,** individually, **LUIS A REINOSO,** individually **JOHN DENTIST,** individually and **JANE DOCTOR,** individually,

Defendants.

JUDGMENT

In accordance with the Order entered on this 10th day of Dec., 1991, awarding Plaintiffs' counsel, Bullock & Bullock, base attorney fees and expenses, the Court

hereby enters judgment in favor of Plaintiffs' counsel, Bullock & Bullock, in the amount of $ 9,745.00 for base fees and $ 1,165.00 for expenses.

ORDERED this 10th day of Dec., 1991.

S/ JAMES O. ELLISON

JAMES O. ELLISON
United States District Court

Louis W. Bullock
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320 South Boston, Suite 718
Tulsa, Oklahoma 74103-3708
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Judith Gran
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ATTORNEYS FOR PLAINTIFFS

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DEPARTMENT OF HUMAN SERVICES
P. O. Box 53025
Oklahoma City, Oklahoma 73152
(405) 521-3638
ATTORNEY FOR DEFENDANTS

ajb OBA #5026

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

DAVID and JULIE CARR, Husband and Wife,	)	
Plaintiffs,	)	
vs.	)	Case No: 90-C-938B
FARMERS INSURANCE COMPANY,	)	
Defendant.	)	

ORDER OF DISMISSAL WITH PREJUDICE

On this 9th day of Dec., 1991, the joint application of the parties for an order of dismissal with prejudice came on before the court for hearing. The court finds that the parties have settled the issues between them and that said application should be and is hereby sustained.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED, that the above captioned matter is ordered dismissed with prejudice to any refiling herein.

S/ THOMAS R. BRETT

JUDGE OF THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

APPROVED AS TO FORM:

KEVIN SCHOEPPEL
Attorney for Plaintiff

DENNIS KING
Attorney for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LARRY MOOREHOUSE,

Plaintiff,

vs.

GRAND RIVER DAM AUTHORITY, a Government Agency of the State of Oklahoma, et al.,

Defendants.

No. 88-C-1529-E

ORDER AND JUDGMENT

This matter is before the Court on Defendants' Motion for Summary Judgment. Plaintiff has initiated four causes of action: two federal claims for alleged violations of his procedural and substantive due process rights under 42 U.S.C. §1983 and state claims for slander, libel and intentional infliction of emotional distress. Defendants argue that his claims should be dismissed because he has not established that he had either a constitutionally protected property interest in his at-will employment or ~~that~~ a liberty interest that was infringed under the material and undisputed facts of the case. The Court agrees. The Court finds that evidence submitted by Plaintiff in support of his position is, at best, colorable but not sufficiently probative to withstand the motion. Anderson v. Liberty Lobby, 477 U.S. 242, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986). Therefore, summary judgment is appropriate and should be granted. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Because the federal claims are now dismissed the Court declines to

address the state claims on jurisdictional grounds and finds that the state claims should be dismissed as well.

IT IS THEREFORE ORDERED that Defendants' Motion for Summary Judgment is granted; the Plaintiff shall take nothing from Defendant; this action is hereby dismissed on the merits.

ORDERED this 6th day of December, 1991.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MARGARET F. JONES and DAVID C. JONES,	)	
Plaintiffs,	)	
vs.	)	**Case No. 91 C-349 B**
DOUBLETREE, INC., a foreign corporation, d/b/a DOUBLETREE HOTELS, INC.,	)	
Defendant.	)	

ORDER OF DISMISSAL WITH PREJUDICE

Now on this 9th day of December, 1991, the above matter comes on for hearing before the undersigned Judge of the United States District Court upon the parties Joint Application to Dismiss with Prejudice and the Court being fully advised in the premises and upon consideration thereof, finds that the parties' Application should be granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED by the Court that the above-captioned case is dismissed with prejudice.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

WHEATLEY GASO, INC.
a Delaware Corporation,

Plaintiff,

v.

ARROW VALVE CO., INC.
a Kansas Corporation,

Defendant.

Civil Action No. 90-C-561-C

JUDGMENT

This action came on for trial before the Court and a jury, Honorable H. Dale Cook, Chief District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged

With respect to the action under Title 15 U.S.C., §1125(a) (Section 43(a) of the Lanham Act), that the Defendant, Arrow Valve Co., Inc., is awarded judgment pursuant to the verdict of the jury.

With respect to the action under the Oklahoma Deceptive Trade Practices Act, Title 78 O.S., Section 53, that this action has been dismissed by mutual consent of the parties.

Dec. 6 1991
Date

H. Dale Cook, Chief District Judge

APPROVED AS TO FORM:

Attorney for Plaintiff

Attorney for Defendant

105

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

LUCILLE FRANCES RAME,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 90-C-968-B
	)	
STATE OF OKLAHOMA, et al,	)	
	)	
Defendants.	)	

O R D E R

This matter comes on for consideration of Plaintiff's Objection to Magistrate Judge's Report and Recommendation, which Report was entered August 20, 1991.

According to the Report and Recommendation, this is the fourth habeas corpus petition Plaintiff has filed since 1985 contesting a murder conviction for which she was sentenced in 1981 in Craig County District Court, State of Oklahoma, within the Northern District of Oklahoma. Plaintiff filed a petition in this Court in 1985, denied on the merits January 6, 1986. A second petition was filed in 1987, denied January 14, 1988. A third petition was denied by the United States District Court for the Western District of Oklahoma in August, 1988, that Court concluding her petition was "successive and abusive and represents needless piecemeal litigation".

In the current Petition, Plaintiff contends the state knowingly used perjured testimony to provide the basis for her conviction. Plaintiff presented this same "perjured testimony"

argument in each of her previous petitions.

The Magistrate Judge's Report and Recommendation succinctly states the applicable controlling law:

> If an issue has been adjudicated on the merits in a prior petition and the ends of justice would not be served by a redetermination of the issues, a successive federal habeas corpus petition may be dismissed under Rule 9(b). *Smith v. Kemp, 715 F.2d 1459, 1467-68 (11th Cir. 1983).* The issue of the state knowingly using perjured testimony has been adjudicated on the merits in Rame's first petition. It also was included in her second and third petition. The question then becomes whether the ends of justice would be served by a redetermination of these issues.
>
> The "ends of justice" have been defined by courts as intervening changes in controlling law or some other justification for having failed to raise a crucial point or argument in a prior application. *Sanders v. United States, 373 U.S. 1, 83 S.Ct. 1068, 10 L.Ed.2d 148 (1963).* Rame asserts no change in controlling law or other justification in her briefs or motions.

The Court concludes Plaintiff's Objection to the Magistrate Judge's Report and Recommendation should be and the same is herewith DENIED. The Court further concludes the Magistrate Judge's Report and Recommendation should be and the same is herewith approved and affirmed. Plaintiff's Petition for a Writ of Habeas Corpus should be and the same is herewith DISMISSED.

IT IS SO ORDERED this 6th day of December, 1991.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

mks

OBA #5026

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

TODD AKIN, by and through his next friend, H. DON AKIN, Plaintiff,	)	
vs.	)	No. 90-C-974-E
JOHN HAUSAM REALTORS, an Oklahoma corporation, and BOB COTTRILL, Defendants.	)	

COURT ORDER APPROVING SETTLEMENT AND ENTERING DISMISSAL WITH PREJUDICE

NOW on this 6th day of November, 1991, the joint application of the parties for court approval of the settlement and for an order of dismissal came on before the court for hearing. The court, having reviewed the pleadings and the affidavit of H. Don Akin and being fully advised in the premises herein finds as follows:

In October and November of 1990, Bob Cottrill held out a certain residence for lease through John Hausam Realtors. Todd Akin, a handicapped adult through Volunteers of America and through his parents applied to lease said residence. He was unsuccessful in his attempt to lease the premises, and a claim has arisen against the defendants alleging discrimination against the handicapped. Said claim is disputed by the defendants as to both liability and damages. The parties through a court supervised settlement conference have reached a compromise agreement and have

requested that the court approve the settlement as Todd Akin, although an adult, is profoundly retarded and legally incompetent.

The court finds that Todd Akin, although legally an adult, is incompetent to act on his own behalf as he is profoundly retarded. The court further finds that H. Don Akin is the father of Todd Akin and is competent to act on his behalf and he is hereby appointed guardian ad litem.

The court finds that the compromise agreement has been reached wherein the defendants have offered to pay to the plaintiff Todd Akin, by and through his guardian ad litem, H. Don Akin, the sum of TWELVE THOUSAND DOLLARS ($12,000.00), representing the claim for all damages including costs and attorney fees. The court further finds that the parties have agreed that said settlement should be held confidential. The court orders that said settlement be held to be confidential.

The court finds that the parties have reached an informed decision to waive the right to jury trial and that they are fully aware of the consequences of settlement of this matter and are aware that once the court approves the settlement, and the settlement proceeds have been paid, that Todd Akin and his guardian ad litem shall be forever barred from making any additional claims as a result of the alleged incident.

The court further finds that said settlement is in the best interest of Todd Akin, and authorizes his guardian ad litem to enter into said settlement agreement.

The court orders H. Don Akin to keep the funds in trust in the trust account of Gary Richardson except for attorney fees and costs

until such time as a guardian has been appointed for Todd Akin in the District Court for Tulsa County, at which point said proceeds can be paid to the guardian pursuant to the order of that court. The court finds that Gary Richardson, as attorney for Todd Akin, is entitled to receive an attorney's fee, cost reimbursement in the amount of $ 6,006.00 to be taken out of the settlement received by Todd Akin through his guardian ad litem. The court finds that said fee is reasonable and is hereby approved.

The court finds and hereby orders that the proposed settlement, as set forth above and in the application, should be and is hereby approved.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the above captioned matter is hereby dismissed with prejudice to refiling.

JUDGE OF THE UNITED STATES DISTRICT COURT

APPROVED AS TO FORM:

GARY RICHARDSON
Attorney for Plaintiff

CRAIG HOSTER
Attorney for John Hausam

DENNIS KING
Attorney for Cottrill

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

PAUL BERRY, ET AL

Plaintiff(s)

vs.

MORGAN LEASING

Defendant(s)

No. 91-C-153-C

ADMINISTRATIVE CLOSING ORDER

The **Defendant**, having filed it's petition in bankruptcy and these proceedings being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 30 days of final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 6 day of December, 1991.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

TOMMY THURMAN STANFORD,)
)
Plaintiff,)
)
v.) 91-C-289-E
)
RON CHAMPION,)
)
Defendant.)

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate Judge filed October 18, 1991 in which the Magistrate Judge recommended that Respondent's Motion to Dismiss be granted.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate Judge should be and hereby is adopted and affirmed.

It is, therefore, Ordered that Respondent's Motion to Dismiss is granted.

Dated this 5th day of December, 1991.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,	
Plaintiff,	
vs.	
THOMAS C. BEAR a/k/a Thomas Charles Bear a/k/a T.C. Bear; PAMALA L. Blaylock a/k/a PAMALA L. BEAR a/k/a PAMALA L. HOLDEN; ELIZABETH JANE BEAR a/k/a ELIZABETH JANE ROMICK BEAR a/k/a BETH BEAR a/k/a ELIZABETH BIBLE a/k/a; DOUGLAS L. HOOPER; JUNE A. HOOPER; COUNTY TREASURER, Ottawa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Ottawa County, Oklahoma,	
Defendants.	CIVIL ACTION NO. 91-C-378-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 6 day of Dec, 1991. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney; the Defendants, County Treasurer, Ottawa County, Oklahoma, and Board of County Commissioners, Ottawa County, Oklahoma, appear by Barry V. Denney, Assistant District Attorney, Ottawa County, Oklahoma; and the Defendants, Thomas C. Bear a/k/a Thomas Charles Bear a/k/a T.C. Bear, Pamala L. Blaylock a/k/a Pamala L. Bear a/k/a Pamala L. Holden, Elizabeth Jane Bear a/k/a Elizabeth Jane Romick Bear a/k/a Beth Bear a/k/a Elizabeth Bible, Douglas L. Hooper and June A. Hooper, appear not, but make default.

The Court, being fully advised and having examined the court file, finds that the Defendant, Thomas C. Bear a/k/a Thomas

Charles Bear a/k/a T.C. Bear, acknowledged receipt of Summons and Complaint on June 9, 1991; that the Defendant, Pamala L. Blaylock a/k/a Pamala L. Bear a/k/a Pamala L. Holden, acknowledged receipt of Summons and Complaint on June 13, 1991; and that the Defendant, Elizabeth Jane Bear a/k/a Elizabeth Jane Romick Bear a/k/a Beth Bear a/k/a Elizabeth Bible, acknowledged receipt of Summons and Complaint on June 30, 1991.

The Court further finds that the Defendants, Douglas L. Hooper and June A. Hooper, were served by publishing notice of this action in the Miami News-Record, a newspaper of general circulation in Ottawa County, Oklahoma, once a week for six (6) consecutive weeks beginning September 13, 1991, and continuing to October 18, 1991, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(C)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Douglas L. Hooper and June A. Hooper, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Douglas L. Hooper and June A. Hooper. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the

evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Farmers Home Administration, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Kathleen Bliss Adams, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Ottawa County, Oklahoma, and Board of County Commissioners, Ottawa County, Oklahoma, filed their Answer on June 11, 1991; and that the Defendants, Thomas C. Bear a/k/a Thomas Charles Bear a/k/a T.C. Bear, Pamala L. Blaylock a/k/a Pamala L. Bear a/k/a Pamala L. Holden, Elizabeth Jane Bear a/k/a Elizabeth Jane Romick Bear a/k/a Beth Bear a/k/a Elizabeth Bible, Douglas L. Hooper and June A. Hooper, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on December 2, 1987, Thomas Charles Bear a/k/a T.C. Bear and Elizabeth Jane Romick Bear a/k/a Beth Bear a/k/a Elizabeth Bible filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No.

87-03357-C, and were discharged on March 14, 1988.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Ottawa County, Oklahoma, within the Northern Judicial District of Oklahoma:

> Lot 5B and West 20 feet of Lot 6A in Block 14, in the Interurban Heights Addition to Miami, Oklahoma, according to the Amended Plat thereof.

The Court further finds that on February 6, 1979, the Defendant, Pamala L. Blaylock, executed and delivered to the United States of America, acting through the Farmers Home Administration, her promissory note in the amount of $29,960.00, payable in monthly installments, with interest thereon at the rate of 8.75 percent (8.75%) per annum.

The Court further finds that on April 23, 1981, the Defendants, Pamala L. Bear and Thomas C. Bear, executed and delivered to the United States of America, acting through the Farmers Home Administration, their promissory note in the amount of $1,390.00, payable in monthly installments, with interest thereon at the rate of 13 percent (13%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Pamala L. Bear and Thomas C. Bear, executed and delivered to the United States of America, acting through the Farmers Home Administration, a mortgage dated April 23, 1981, covering the above-described property. Said mortgage was recorded on

April 23, 1981, in Book 406, Page 623, in the records of Ottawa County, Oklahoma.

The Court further finds that on October 6, 1981, the Defendants, Thomas C. Bear and Pamala L. Bear, executed and delivered to the United States of America, acting through the Farmers Home Administration, their Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on October 21, 1983, the Defendants, Thomas C. Bear and Pamala Bear, executed and delivered to the United States of America, acting through the Farmers Home Administration, their Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on May 21, 1984, the Defendants, Thomas C. Bear and Pamala L. Bear, executed and delivered to the United States of America, acting through the Farmers Home Administration, their Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on October 21, 1985, the Defendant, Thomas C. Bear, executed and delivered to the United States of America, acting through the Farmers Home Administration, his Interest Credit Agreement pursuant to which the interest rate on the above-described note and mortgage was reduced.

The Court further finds that on May 21, 1984, the Defendants, Thomas C. Bear and Pamala L. Bear, executed and delivered to the United States of America, acting through the Farmers Home Administration, their Reamortization and/or Deferral Agreement pursuant to which the entire debt due on that date was made principal.

The Court further finds that on May 21, 1984, the Defendants, Thomas C. Bear and Pamala L. Bear, executed and delivered to the United States of America, acting through the Farmers Home Administration, their Reamortization and/or Deferral Agreement pursuant to which the entire debt due on that date was made principal.

The Court further finds that the Defendants, Thomas C. Bear a/k/a Thomas Charles Bear a/k/a T.C. Bear and Pamala L. Blaylock a/k/a Pamala L. Bear a/k/a Pamala L. Holden, made default under the terms of the aforesaid notes, mortgage, interest credit agreements, and reamortization and/or deferral agreements by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Thomas C. Bear a/k/a Thomas Charles Bear a/k/a T.C. Bear and Pamala L. Blaylock a/k/a Pamala L. Bear a/k/a Pamala Holden, are indebted to the Plaintiff in the principal sum of $24,960.49, plus accrued interest in the amount of $6,461.48 as of August 3, 1990, plus interest accruing thereafter at the rate of 8.75 percent per annum or $11.7674 per day until judgment, plus interest thereafter at the legal rate until fully paid, and the further sum due and owing under the

interest credit agreements of $4,058.00, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of $210.30 ($20.00 docket fees, $182.30 publication fees, $8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of $104.35, plus penalties and interest, for the year of 1990. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Thomas C. Bear a/k/a Thomas Charles Bear a/k/a T.C. Bear, Pamala L. Blaylock a/k/a Pamala L. Bear a/k/a Pamala L. Holden, Elizabeth Jane Bear a/k/a Elizabeth Jane Romick Bear a/k/a Beth Bear a/k/a Elizabeth Bible, Douglas L. Hooper and June A. Hooper, are in default and have no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Thomas C. Bear a/k/a Thomas Charles Bear a/k/a T.C. Bear and Pamala L. Blaylock a/k/a Pamala L. Bear a/k/a Pamala L. Holden, in the principal sum of $24,960.49, plus accrued interest in the amount of $6,461.48 as of August 3, 1990, plus interest accruing thereafter at the rate of 8.75 percent per annum or $11.7674 per day until judgment, plus interest thereafter at the current legal rate of 4.98 percent per annum until paid, and the further

sum due and owing under the interest credit agreements of $4,058.00, plus interest on that sum at the legal rate from judgment until paid, and the costs of this action in the amount of $210.30 ($20.00 docket fees, $182.30 publication fees, $8.00 fee for recording Notice of Lis Pendens) plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums for the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Ottawa County, Oklahoma, have and recover judgment in the amount of $104.35, plus penalties and interest, for ad valorem taxes for the year 1990, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Thomas C. Bear a/k/a Thomas Charles Bear a/k/a T.C. Bear, Pamala L. Blaylock a/k/a Pamala L. Bear a/k/a Pamala L. Holden, Elizabeth Jane Bear a/k/a Elizabeth Jane Romick Bear a/k/a Beth Bear a/k/a Elizabeth Bible, Douglas L. Hooper and June A. Hooper, claim no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Thomas C.Bear a/k/a Thomas Charles Bear a/k/a T.C. Bear and Pamala L. Blaylock a/k/a Pamala L. Bear a/k/a Pamala L. Holden, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell, according to Plaintiff's

election with or without appraisement, the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, County Treasurer, Ottawa County, Oklahoma, in the amount of $104.35, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney

KATHLEEN BLISS ADAMS, OBA #13625
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

BARRY V. DENNEY, OBA#11284
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Ottawa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 91-C-378-C

KBA/esr

entered

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff, vs. EUGENE LONG; DOROTHY J. LONG; STATE OF OKLAHOMA ex rel. OKLAHOMA TAX COMMISSION; COUNTY TREASURER, Rogers County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Rogers County, Oklahoma, Defendants.	)	FILED DEC 6 1991 Richard M. Lawrence, Clerk U.S. DISTRICT COURT NORTHERN DISTRICT OF OKLAHOMA CIVIL ACTION NO. 90-C-954-C

DEFICIENCY JUDGMENT

This matter comes on for consideration this 6 day of Dec, 1991, upon the Motion of the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, for leave to enter a Deficiency Judgment. The Plaintiff appears by Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, and the Defendants, Eugene Long and Dorothy J. Long, appear neither in person nor by counsel.

The Court being fully advised and having examined the court file finds that a copy of Plaintiff's Motion was mailed to Eugene Long and Dorothy J. Long, 145 Morrow Road, Sand Springs, Oklahoma 74063, and all counsel and parties of record.

The Court further finds that the amount of the Judgment rendered on February 11, 1991, in favor of the Plaintiff United States of America, and against the Defendants, Eugene Long and

NOTE: THIS ORDER IS TO BE MAILED BY MOVANT TO ALL COUNSEL AND PRO SE LITIGANTS IMMEDIATELY UPON ENTRY

Dorothy J. Long, with interest and costs to date of sale is $56,228.28.

The Court further finds that the appraised value of the real property at the time of sale was $39,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered February 11, 1991, for the sum of $35,025.00 which is less than the market value.

The Court further finds that the Marshal's sale was confirmed pursuant to the Order of this Court on the 25th day of November, 1991.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Eugene Long and Dorothy J. Long, as follows:

Principal Balance as of 2/11/91	$50,301.69
Interest	4,316.44
Late Charges to Date of Judgment	271.12
Appraisal by Agency	500.00
Management Broker Fees to Date of Sale	334.10
Abstracting	131.00
Publication Fees of Notice of Sale	148.93
Court Appraisers' Fees	225.00
TOTAL	$56,228.28
Less Credit of Appraised Value -	39,000.00
DEFICIENCY	$17,228.28

plus interest on said deficiency judgment at the legal rate of _____ percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from the Defendants, Eugene Long and Dorothy J. Long, a deficiency judgment in the amount of $17,228.28, plus interest at the legal rate of 4.98 percent per annum on said deficiency judgment from date of judgment until paid.

(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

PB/css

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

LOWRANCE ELECTRONICS, INC., a corporation, and LEI EXTRAS, INC., a corporation, Plaintiffs,	)	
v.	)	Case No. 91-C-0083-B
TECHSONIC INDUSTRIES, INC., a corporation, Defendant.	)	

CONSENT JUDGMENT

This cause came to be heard on the 5th day of Dec., 1991, before the Honorable Thomas R. Brett, U.S. District Judge presiding. Plaintiffs LOWRANCE ELECTRONICS, INC. and LEI EXTRAS, INC. ("Lowrance") appeared through their attorneys, Doerner, Stuart, Saunders, Daniel & Anderson, by Robert F. Biolchini, Albert J. Givray, Charles S. Plumb, John J. Carwile, and Michael C. Redman. Defendant TECHSONIC INDUSTRIES, INC. ("Techsonic") appeared through its attorneys McLain & Merritt, P.C., by Robert B. Hill, and Moyers, Martin, Santee, Imel & Tetrick, by Patrick D. O'Connor.

The parties advised the Court that they have consented to judgment based upon a compromise settlement agreement, whose terms and conditions are set forth below. The Court, being fully advised, finds and concludes the parties' compromise settlement should be approved and adopted as the order and judgment of this Court.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED BY THE COURT AS FOLLOWS:

1. Techsonic will stop running the Dimension 3 video tape and Dimension 3 magazine or newspaper print ads published, distributed, or used in the marketplace as of 11-22-91. Techsonic further agrees to cease printing and distribution of the Dimension 3 boxes (except boxes packaged with Dimension 3 units as of 2-22-92) and catalogs with reference to Dimension 3 advertising used as of 11-22-91 by 2-22-92, and will cease publishing, distributing, or using the Dimension 3 product brochures used as of 11-22-91 by 2-22-92.

2. Lowrance will stop running the Eagle Challenge comparative video tape and Eagle Challenge magazine or newspaper print ads published, distributed, or used in the marketplace as of 11-22-91.

3. Techsonic and Lowrance will dismiss with full prejudice all claims by each against the other asserted in this case.

4. Lowrance and Techsonic shall each reserve the right at all times:

   a. to enforce each term of this Consent Judgment; and

   b. to take legal action against the contents of any and all advertising, promotion, or the like published, distributed, or used after 11-22-91. By this Consent Judgment neither party is releasing the other from liability for future

advertising, promotional material, or the like, so that statements in such material published or distributed before 11-22-91 shall not be actionable, but the same or similar statements in advertising, promotion, or the like published or distributed after 11-22-91 shall be fully actionable.

5. This Court will retain jurisdiction, personal and subject matter, to enforce this Consent Judgment and to construe its terms.

6. The parties will meet with Magistrate Judge Wagner during the next 15 days from 11/22/91 to consider the contours of a possible arbitration mechanism for any false advertising disputes that may arise between the parties after 11/22/91; if the parties cannot agree on such arbitration mechanism by 12/7/91, the Consent Judgment will consist of the above terms without any reference to future arbitration.

7. A written judgment of dismissal with full prejudice based upon this Consent Judgment will be filed with the Clerk of the Court forthwith.

8. This Consent Judgment is binding only upon plaintiffs, defendant, their officers, agents, servants, employees, and upon those persons in active concert or participation with them who receive actual notice of this Consent Judgment by personal service or otherwise.

9. Lowrance and Techsonic will notify the persons and

entities bound by the scope of this Consent Judgment of the injunctive provisions set forth herein relating to their respective print ads, brochures, catalogs, and video tape within ten (10) days from the date hereof.

10. Prior to initiating any action to enforce this injunction, the parties shall give seven (7) days written notice to the alleged offending party reasonably identifying the nature of the violation. Within such period the parties shall engage in a good faith effort to resolve the alleged violation by agreement. Neither party shall initiate any lawsuit or other enforcement or defensive action within the seven (7) day period.

11. In the event either party is notified that a commercial dealer or enterprise which is not under that party's control is displaying or publishing an advertisement or video enjoined by this Consent Judgment, such party will exercise a reasonable good faith effort by making a written request that the video or advertisement is no longer used because it is outdated, which action will constitute full compliance with the terms of this Consent Judgment.

12. The parties hereto further agree that all documents will be returned within 15 days from 11/22/91 pursuant to the terms and procedures set forth in Paragraph 10 of the Protective Order between the parties entered into by Order of Judge Brett on April 11, 1991.

The Clerk of the Court shall forthwith enter judgment in accordance with the terms and conditions stated above.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

ABOVE AND FOREGOING CONSENT JUDGMENT APPROVED IN FORM AND CONTENT BY EACH PARTY'S COUNTERPART EXECUTION ON THE RESPECTIVE DATES SHOWN BELOW IN SUCCEEDING PAGES:

TECHSONIC INDUSTRIES, INC.

By: _____

Typed Name: _____

Title: _____

Date: _____

LOWRANCE ELECTRONICS, INC.

By: Darrell Lowrance

Typed Name: Darrell J. Lowrance

Title: President

Date: 11-27-91

LEI EXTRAS, INC.

By: _____

Typed Name: Graham A. Wilson

Title: President

Date: 11-27-91

McLAIN & MERRITT, P.C.

By _____

Robert B. Hill
1250 Tower Place
3340 Peachtree Rd.
Atlanta, Georgia 30326
(404) 266-9171

DOERNER, STUART, SAUNDERS, DANIEL & ANDERSON

By _____

Robert F. Biolchini
Albert J. Givray
Charles S. Plumb
John J. Carwile
Michael C. Redman
Suite 500
320 South Boston Avenue
Tulsa, Oklahoma 74103
(918) 582-1211

MOYERS, MARTIN, SANTEE IMEL & TETRICK

By _____

Patrick D. O'Connor
Suite 900
320 South Boston Avenue
Tulsa, Oklahoma 74103
(918) 582-5281

ABOVE AND FOREGOING CONSENT JUDGMENT APPROVED IN FORM AND CONTENT BY EACH PARTY'S COUNTERPART EXECUTION ON THE RESPECTIVE DATES SHOWN BELOW IN SUCCEEDING PAGES:

TECHSONIC INDUSTRIES, INC.

By: _____

Typed Name: Al Nunley

Title: VP of Marketing

Date: 11-26-91

LOWRANCE ELECTRONICS, INC.

By: _____

Typed Name: Darrell J. Lowrance

Title: President

Date: 11-27-91

LEI EXTRAS, INC.

By: _____

Typed Name: Graham A. Wilson

Title: President

Date: 11-27-91

McLAIN & MERRITT, P.C.

By: _____

Robert B. Hill
1250 Tower Place
3340 Peachtree Rd.
Atlanta, Georgia 30326
(404) 266-9171

DOERNER, STUART, SAUNDERS
DANIEL & ANDERSON

By: _____

Robert F. Biolchini
Albert J. Givray
Charles S. Plumb
John J. Carwile
Michael C. Redman
Suite 500
320 South Boston Avenue
Tulsa, Oklahoma 74103
(918) 582-1211

MOYERS, MARTIN, SANTEE
IMEL & TETRICK

By: _____

Patrick D. O'Connor
Suite 900
320 South Boston Avenue
Tulsa, Oklahoma 74103
(918) 582-5281

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

5 1991

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

SHIRLEY J. WHITE,

Plaintiff,

vs.

WAL-MART STORES, INC., a Delaware Corporation,

Defendant.

No. 90-C-986-E

JUDGMENT

This action came on for jury trial before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly tried and jury having rendered its verdict,

IT IS THEREFORE ORDERED that the Plaintiff Shirley J. White recover of the Defendant Wal-Mart Stores, Inc. the sum of $34,000.00, with interest thereon at the rate of 4.98 per cent as provided by law, and her costs of action.

ORDERED this 4th day of December 3, 1991.

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

44

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM BRADFORD INGE; MARY BETH INGE; DORIS ANN SIMON; COUNTY TREASURER, Tulsa County, Oklahoma; and BOARD OF COUNTY COMMISSIONERS, Tulsa County, Oklahoma,

Defendants.

Case No. 88-C-591-B

O R D E R

This matter comes on for consideration of the Plaintiff's Appeal from the Magistrate Judge's Order entered herein on April 29, 1991. Plaintiff, United States of America, filed its appeal on May 6, 1991.

This matter evolves from a Veterans Administration mortgage foreclosure. William and Mary Inge (Inges)were original mortgagors of a VA mortgage. The Inges sold the property to Doris Ann Simon who ultimately defaulted on the mortgage loan. The Government obtained Judgment against the Inges, *in personam*, and against Simon, *in rem*.[1] On December 19, 1988, judgment was entered against the Inges for $23,837.49 plus 13 % interest from October 1, 1987, plus post-judgment interest of 9.20% plus costs of the action.

[1] Simon filed bankruptcy and included the VA indebtedness, thereby negating liability *in personam*.

At the Marshal's sale held August 14, 1989, no bids were received which were equal to or in excess of two-thirds of the court appointed appraised value of $14,000.00.. The judgment was amended at the Government's request to provide sale without appraisement which sale was held September 11, 1990. At such sale the Government bought the property for $9,741.00, the sale being confirmed on April 11, 1991.[2] Prior thereto, on December 7, 1990, the Government filed its Motion For Leave To Enter Deficiency Judgment to which the Inges filed their Objection on December 12, 1990.

At a hearing held April 23, 1991, before Magistrate Judge Wolfe, certain rulings were entered, later memorialized by written order entered April 29, the subject order appealed from.

The Government contests the Magistrate Judge's Order on two grounds: (1) The Motion For Deficiency Judgment Was Not Properly Before The Magistrate Judge Since It Was Never Referred By The District Court Judge. (2) The Order Of The Magistrate Judge Exceeds His Authority By Ordering Matters Outside His Jurisdiction, Matters Irrelevant To The Issues Before The Court, Matters Involving Work Product And Attorney/Client Privileged Matters, And Matters Never Sought Or Advocated By The Party Objecting To The Deficiency Judgment.

The Court dismisses the Government's first area of contest out

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[2] The Order confirming the sale was in reality an Order adopting and affirming the Report and Recommendation of United States Magistrate Judge Wolfe which report recommended the sale be confirmed.

of hand. The Government has cited no authority for the proposition that Magistrate Judge Wolfe did not have the requisite jurisdiction and authority to hear the matter before him, i.e. the motion relative to a request for entry of a deficiency judgment.[3] Matters of assignment of cases among Judges are internal matters to which party litigants are not privy. 28 U.S.C. § 137. Magistrate Judges may be referred civil matters for Report and Recommendation such at the instant matter. 28 U.S.C. § 636. The Government's objection on this issue is herewith OVERRULED.

The Court next addresses the Government's second objection, a six part issue relating to six requirements ordered by Magistrate Judge Wolfe in supplementation of the record preparatory to another scheduled hearing date before him, which hearing date has been since stricken. In the main, these requirements relate to internal matters and policies within the VA, particularly as to decisions to seek deficiency judgments and methods of appraisal. The Court concludes these requirements, except requirement six which the Government acquiesces in[4], are beyond the pale of deficiency

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[3] The Government's main complaint on this issue seems to be a docket sheet indication, by stamp, that the matter had been assigned to Magistrate Judge Wagner. The Court perceives no litigant standing as to the choice of Magistrate Judge, only the jurisdiction of such Judge to consider the subject matter before him. Also, the Court notes the Government entered no objection as to the authority of Magistrate Judge Wolfe's earlier entry of a Report and Recommendation regarding confirmation of the marshal's sale.

[4] The United States acknowledges its burden that to recover costs of maintaining a property it must demonstrate the actual amount spent and the nature of the expenditures and services rendered.

judgment Reports and Recommendations. Accordingly, all requirements, except requirement six, are vacated.

The Court refers the matter to Magistrate Judge Wolfe, with directions that a further hearing be held, and evidence taken, if necessary, consistent with past practices in determining, by Report and Recommendation, the Government's Motion For Entry of Deficiency Judgment.

IT IS SO ORDERED this 5th day of December, 1991.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

entered

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CANDY JEWEL COIT, Plaintiff, vs. OSAGE RAILROAD, Defendant, and BURLINGTON NORTHERN RAILROAD, Defendant and Third-Party Plaintiff, vs. UNION PACIFIC RAILROAD COMPANY, Third-Party Defendant.	)	Case No. 91-C-12-E **(CONSOLIDATED)**
GLENDA HILL, et al., Plaintiff, vs. OSAGE RAILROAD, Defendant, and BURLINGTON NORTHERN RAILROAD, Defendant and Third-Party Plaintiff, vs. UNION PACIFIC RAILROAD COMPANY, Third-Party Defendant.	)	Case No. 91-C-22-E

DEFENDANT AND THIRD PARTY PLAINTIFF BURLINGTON NORTHERN RAILROAD'S NOTICE OF DISMISSAL OF THIRD PARTY DEFENDANT, UNION PACIFIC RAILROAD COMPANY

The defendant and third party plaintiff, Burlington Northern Railroad, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, dismisses, without prejudice, its claims against the

third party defendant, Union Pacific Railroad Company, as set forth in the third party complaint filed by Burlington Northern Railroad on the 18th day of June, 1991. This dismissal is filed without prejudice, as the third party defendant has not served an answer to the claims filed by third party plaintiff.

Dated this 5th day of December, 1991.

MOYERS, MARTIN, SANTEE,
IMEL & TETRICK

By _____
R. Scott Savage, OBA #7926
320 S. Boston, Suite 920
Tulsa, OK 74103
(918) 582-5281

ATTORNEYS FOR DEFENDANT AND
THIRD PARTY PLAINTIFF
Burlington Northern Railroad

CERTIFICATE OF MAILING

I certify that on the 5th day of December, 1991, I mailed, with sufficient postage affixed thereon, a true and correct copy of the foregoing **Defendant And Third Party Plaintiff Burlington Northern Railroad's Notice Of Dismissal Of Third Party Defendant, Union Pacific Railroad Company**, to the following:

Russell Uselton, Esq.
STIPE, GOSSETT, STIPE, HARPER,
ESTES, McCUNE and PARKS
P. O. Box 1368
McAlester, OK 74502-1368

Anthony M. Laizure, Esq.
STIPE, GOSSETT, STIPE, HARPER,
ESTES, McCUNE and PARKS
P. O. Box 701110
Tulsa, OK 74170-1110

Larry L. Oliver, Esq.
2211 E. Skelly Drive
Tulsa, OK 74105

Harry Parrish, Esq.
P. O. Box 1560
Tulsa, OK 74101-1560

Phil Frazier, Esq.
FRAZIER, SMITH & PHILLIPS
1424 Terrace Drive
Tulsa, OK 74104

R. Scott Savage

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

entered

CANDY JEWEL COIT,

Plaintiff,

vs.

OSAGE RAILROAD,

Defendant,

and

BURLINGTON NORTHERN RAILROAD,

Defendant and Third-Party Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY,

Third-Party Defendant.

Case No. 91-C-12-E
(CONSOLIDATED)

GLENDA HILL, et al.,

Plaintiff,

vs.

OSAGE RAILROAD,

Defendant,

and

BURLINGTON NORTHERN RAILROAD,

Defendant and Third-Party Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY,

Third-Party Defendant.

Case No. 91-C-22-E

FILED

DEC - 5 1991

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

DEFENDANT AND THIRD PARTY PLAINTIFF BURLINGTON NORTHERN RAILROAD'S NOTICE OF DISMISSAL OF THIRD PARTY DEFENDANT, UNION PACIFIC RAILROAD COMPANY

The defendant and third party plaintiff, Burlington Northern Railroad, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, dismisses, without prejudice, its claims against the

third party defendant, Union Pacific Railroad Company, as set forth in the third party complaint filed by Burlington Northern Railroad on the 18th day of June, 1991. This dismissal is filed without prejudice, as the third party defendant has not served an answer to the claims filed by third party plaintiff.

Dated this 5th day of December, 1991.

MOYERS, MARTIN, SANTEE,
IMEL & TETRICK

By _____
R. Scott Savage, OBA #7926
320 S. Boston, Suite 920
Tulsa, OK 74103
(918) 582-5281

ATTORNEYS FOR DEFENDANT AND
THIRD PARTY PLAINTIFF
Burlington Northern Railroad

CERTIFICATE OF MAILING

I certify that on the 5th day of December, 1991, I mailed, with sufficient postage affixed thereon, a true and correct copy of the foregoing **Defendant And Third Party Plaintiff Burlington Northern Railroad's Notice Of Dismissal Of Third Party Defendant, Union Pacific Railroad Company**, to the following:

Russell Uselton, Esq.
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Tulsa, OK 74101-1560

Phil Frazier, Esq.
FRAZIER, SMITH & PHILLIPS
1424 Terrace Drive
Tulsa, OK 74104

R. Scott Savage

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 4 1991

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

LOYD I. REYNOLDS, an individual, and LINDA K. REYNOLDS, an individual,

Plaintiffs,

vs.

J. T. SMITH, an individual, and COBRA MANUFACTURING CO., INC., an Oklahoma corporation,

Defendants.

No. 90-C-441-B

J U D G M E N T

In keeping with the Findings of Fact and Conclusions of Law entered this date, Judgment is hereby entered in favor of the Plaintiffs, Loyd I. Reynolds and Linda K. Reynolds, and against the Defendant Cobra Manufacturing Co. Inc., in the amount of Eight Thousand Thirteen Dollars ($8,013.00) for breach of contract, plus pre-judgment interest thereon at the rate of 6% per annum from September 1, 1987 until the date hereon, and post-judgment interest at the rate of 4.98% per annum from the date hereon.

Judgment is entered herein in favor of the Defendants, J. T. Smith and Cobra Manufacturing Co. Inc., on the Plaintiffs' additional claims for breach of contract, infringement of the Reynolds 4,823,474 patent, injunction and request for accounting.

Judgment is further entered in favor of the Plaintiffs, Loyd I. Reynolds and Linda K. Reynolds, on Defendants' claims for indemnity, Reynolds 4,823,474 patent invalidity and claim as co-inventor.

The parties are to pay their own respective attorneys fees and costs are assessed against the Defendant, Cobra Manufacturing Co. Inc., if timely applied for pursuant to Local Rule 6.

DATED this 4th day of December, 1991.

THOMAS R. BRETT
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHARLES SIDNEY JORDAN, JR.,

Plaintiff,

v.

BURLINGTON NORTHERN RAILROAD CO.,

Defendant.

No. 90-C-995-B

ORDER

Before the Court is the motion for summary judgment filed by the defendant, Burlington Northern Railroad Company ("BN"). BN states that it should be granted summary judgment because the plaintiff has failed to establish a prima facie case of religious discrimination or show that BN did not satisfy its obligation to reasonably accommodate the plaintiff's religious beliefs.

Pursuant to the court-ordered schedule in this case, the discovery cut-off date was July 3, 1991 and the dispositive motion deadline was July 16, 1991 with responses due by July 31, 1991. BN filed its motion for summary judgment on July 5, 1991. Plaintiff failed to respond by the deadline, and on August 29, 1991, applied for an extension of time to respond to BN's motion for summary judgment when he applied for an order allowing his attorney, Jeff Nix, to withdraw as counsel. In the Order dated September 12, 1991, the Court granted the plaintiff's application and instructed the plaintiff to have new counsel make an appearance by October 2, 1991 and file a response to BN's motion for summary judgment by October 9, 1991. Plaintiff then filed a second application for an extension

of time on October 2, 1991 explaining that he had not yet retained counsel. The Court granted another extension allowing the plaintiff to have new counsel make an entry of appearance by October 28, 1991 and respond to the motion by November 4, 1991. Plaintiff again failed to meet the deadlines set by the Court. It was not until the rescheduled hearing on the motions on November 21, 1991, that Walter M. Benjamin, new counsel for the plaintiff, appeared before the Court and stated that he had been retained by the plaintiff and wished to file a summary judgment response. Mr. Benjamin also requested a hearing on the motion. In response to Mr. Benjamin's requests, the Court directed Mr. Benjamin to file a response by the next day, and on November 22, 1991, the Court heard oral arguments on the motion.

The following facts are undisputed. In June 1989 the plaintiff applied with BN, an interstate railway carrier, for the position of switchman/brakeman. BN selected the plaintiff as one of twelve interviewees to be a candidate for employment. On the morning of June 12, 1989 ("Administration Day"), the plaintiff and the other employment candidates attended an employment orientation meeting at which it was explained to the plaintiff and other candidates that the position was an extra board position which entailed being on call twenty-four hours a day, seven days a week. The plaintiff did not state any objection to the job requirements at the meeting, and agreed to participate in a seven-day orientation/basic training course for prospective employees. (Defendant's Exhibit 3, p. 12). Also at that time, the plaintiff signed a letter of understanding

which stated that he "must satisfactorily complete this seven (7) day orientation/basic training course in order to remain a candidate for employment," and that the orientation would be followed by a sixty-day probationary period. (Defendant's Exhibit 4). When the plaintiff signed the letter of understanding, he understood that the seven-day orientation course was to be conducted over a period of seven consecutive days. (Defendant's Exhibit 3, pp. 16-17).

Although the plaintiff had not stated any objection to the work schedule requirements on Administration Day, sometime between June 13 and June 16, 1989, the plaintiff approached J.E. Doughman, the Assistant Superintendent, and advised Mr. Doughman that he was a member of the Worldwide Church of God and could not work on the Sabbath, from sunset Friday to sunset Saturday. (Defendant's Exhibit 3, pp. 17-18). Mr. Doughman informed the plaintiff that, given the nature of the job, there was no way to insure that the plaintiff would not be called on the Sabbath but that he would consult with the Terminal Superintendent, William D. Macormic, concerning the matter. (Defendant's Exhibit 3, p. 18).

After conferring with Mr. Macormic, Mr. Doughman left a message on the plaintiff's answering machine informing him that BN would be unable to accommodate him. (Defendant's Exhibits 3, p. 21). In spite of the phone message, the plaintiff reported for the first day of the orientation course. At that time Mr. Doughman told the plaintiff that he would not be able to work for BN because the extra board position required availability for Saturday work, if

necessary. (Plaintiff's Affidavit).

Employment as a switchman/brakeman with BN is covered by BN's collective bargaining agreement with the United Transportation Union. ("Agreement," Defendant's Exhibit 2). Under this agreement, work schedules are determined by a seniority system which allows the employee with more seniority to choose his/her work hours, except in times of emergency. A new employee is typically hired as an "extra board" employee, because he/she does not have sufficient seniority to hold a regular position with regular hours. (Defendant's Exhibit 1, ¶ 5) As an extra board employee, a new employee is assigned to work shifts as needed due to the absence of regular employees or the occurrence of an emergency. Employees on the extra board are rotated; once an employee finishes an assignment, his/her name is moved to the bottom of the extra board list and the next name is called for the next assignment. (Agreement, Art. 16 §A). The Agreement states "[i]f an extra man does not respond to a call, he will be marked off and will not be permitted to mark up on the extra list until the man who accepted the call has completed the vacancy and has acquired eight hours' rest." (Agreement, Art. 16 §A(1)). The Agreement contains no provision allowing an employee a schedule preference to accommodate the employee's religious beliefs. (Defendant's Exhibit 1, ¶ 6). The parties concede that the plaintiff, as a candidate for employment who was terminated during orientation, would come under the terms of the collective bargaining agreement's seniority work scheduling and assignment once he began his duties as a

brakeman/switchman.[1]

Summary judgment pursuant to Fed. R. Civ. P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Where there is an absence of material issues of fact, then the movant is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.E.2d 202 (1986); Windon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986); Commercial Iron & Metal Co. v. Bache & Co., Inc., 478 F.2d 39, 41 (10th Cir. 1973); and Ando v. Great Western Sugar Company, 475 F.2d 531, 535 (10th Cir. 1973).

BN argues that the undisputed facts show that the plaintiff cannot prove a prima facie case of religious discrimination under Title VII, 42 U.S.C. §2000e-2 et seq., and even if the plaintiff could, BN has proved that it is unable to reasonably accommodate plaintiff's religious needs without incurring undue hardship.

Title VII makes it "an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual . . . because of such individual's . . . religion." 42 U.S.C. §2000e-2(a)(1).

> The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that

[1] The parties also agree that the grievance and arbitration provisions of the collective bargaining agreement do not apply to the plaintiff as a candidate for employment.

> he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

42 U.S.C. §2000e(j).

The Tenth Circuit adopted a two-step analysis of a religious discrimination claim in Toledo v. Nobel-Sysco, Inc., 892 F.2d 1481 (10th Cir. 1989). The plaintiff has the burden of proving a prima facie case which consists of the following elements: (1) the plaintiff has a "'bona fide religious belief that conflicts with an employment requirement; (2) he or she informed the employer of this belief; (3) he or she was [not hired] for failure to comply with the conflicting employment requirement.'" Id. at 1486 (quoting Turpen v. Missouri-Kansas-Texas R.R., 736 F.2d 1022, 1026 (5th Cir. 1984)). If the plaintiff sets forth a prima facie case, "'the burden shifts to the employer to show that it was unable reasonably to accommodate the plaintiff's religious needs without undue hardship.'" Id. "Simply put, Title VII requires reasonable accommodation or a showing that reasonable accommodation would be an undue hardship on the employer." Pinsker v. Joint District Number 28J, 735 F.2d 388 (10th Cir. 1984).

While the Court finds that the plaintiff has established a prima facie case of religious discrimination under Title VII,[2] the

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[2] The Court rejects BN's argument that the second element of the plaintiff's prima facie case has not been met. BN argues that the plaintiff did not give BN reasonable notice of the employment conflict with his religious beliefs because he did not inform Mr. Doughman until after Administrative Day and after plaintiff signed the letter of understanding. (The plaintiff informed Mr. Doughman sometime between June 13th and 16th, prior to the orientation/ basic training course.)

The second element of the plaintiff's prima facie religious discrimination case as set forth in Toledo, however, does not

Court concludes that the plaintiff has presented no evidence refuting BN's showing that it could not accommodate the plaintiff without incurring more than *de minimus* expense or compromising the collectively bargained rights of other employees.

In Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977), the Supreme Court determined that Title VII does not require an employer to deviate from the work schedule requirements imposed by a seniority system under a collective bargaining agreement in order to grant an employee shift preference for religious reasons. Id. at 81. In support of its holding, the Supreme Court cited Section 703(h) of Title VII, 42 U.S.C. § 2000e-2(h), which states

> Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system . . . provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin.

In interpreting §703(h), the Supreme Court concluded that "absent a discriminatory purpose, the operation of a seniority system

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require "reasonable notice" to the defendant. The plaintiff is merely required to inform the employer of the conflict prior to the required work absence to give the employer an opportunity to attempt to accommodate the plaintiff's religious needs. Johnson v. Angelica Uniform Group, Inc., 762 F.2d 671, 673 (8th Cir. 1985). Because the plaintiff informed BN at least a week before the first required absence, the Court concludes that the plaintiff has established the second element of his prima facie case. The Court, however, does concede an element of deception in the plaintiff's silence on Administration Day and in the signing of the letter of understanding in which the plaintiff failed to disclose his required work absence on the Sabbath.

cannot be an unlawful employment practice even if the system has some discriminatory consequences." Hardison, 432 U.S. at 82.

It is undisputed that the shift schedule for the position of brakeman/switchman with BN is governed by the seniority system set forth in the collective bargaining agreement. There is also no evidence in the record that the seniority system was designed by BN and/or the union to discriminate against religion rather than to attempt to construct a neutral system of shift assignment. In this regard, the subject collective bargaining agreement's seniority system is the same as TWA's, an interstate air carrier, in Hardison.

In support of its motion, BN presents the affidavit of Mr. Doughman attesting to the following facts:

> 12. It would violate the collectively bargained agreement for an extra board employee to be guaranteed off on certain days.
>
> 18. After the conclusion of Administration Day, sometime between June 13 and 16, 1989, Mr. Jordan came into my office and asked to speak with me. Mr. Jordan advised me that he had a problem in that he was a member of the Worldwide Church of God and he could not under any circumstances work between sunset Friday and sunset Saturday. I informed Mr. Jordan that I understood his problem and that I knew that members of the Seventh Day Adventist Church observed a similar Sabbath. I informed Mr. Jordan that I would consult with the Superintendent, Mr. Macormic, about his situation.
>
> 19. After consulting with Mr. Macormic and evaluating the possibility of some accommodation for Mr. Jordan, we came to the conclusion that it would not be possible to accommodate Mr. Jordan and insure that he would be off work every week from sunset Friday to sunset Saturday without either

> incurring additional expenses or compromising the collectively bargained rights of other employees.

(Defendant's Exhibit 1). The plaintiff, on the other hand, presents no evidence contesting Mr. Doughman's sworn statement that the seniority system precludes BN from accommodating the plaintiff's religious needs without "either incurring additional expenses or compromising the collectively bargained rights of other employees." BN's duty to reasonably accommodate the plaintiff's religious beliefs does not require BN to take steps inconsistent with the seniority provisions of the collective bargaining agreement when there is no evidence that the provisions were designed to discriminate against religion. Id. at 79. This is true when, as in this case, accommodation "would require an employer to incur a greater than de minimus cost or would create a greater than de minimus imposition on co-workers [which] constitutes undue hardship." Turpen, 736 F.2d at 1026. The Court, therefore, concludes that BN has met its burden and there is no genuine issue of material fact concerning BN's inability to reasonably accommodate the plaintiff's religious beliefs without undue hardship.

For the reasons stated above, the Court sustains BN's motion for summary judgment.

IT IS SO ORDERED, this 4th day of December, 1991.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHARLES SIDNEY JORDAN, JR.,

Plaintiff,

v.

BURLINGTON NORTHERN RAILROAD CO.,

Defendant.

No. 90-C-995-B

JUDGMENT

Pursuant to the order sustaining the Defendant Burlington Northern Railroad Company's Motion for Summary Judgment filed this date, Judgment is hereby entered in favor of Defendant, Burlington Northern Railroad Company, and against the Plaintiff, Charles Sidney Jordan, Jr. Plaintiff's action is hereby dismissed. Costs are assessed against the Plaintiff if timely applied for pursuant to Local Rule 6, and each party is to pay their own respective attorneys fee.

DATED this 4th day of December, 1991.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

25

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

NGL SUPPLY, INC.,

Plaintiff,

vs.

No. 90-C-314-E

SKELGAS, INC., a New York corporation; SKELGAS GROUP, INC., a Delaware corporation; SHERMAN C. VOGEL, individually; STEPHEN A. VOGEL, individually; JEFFREY VOGEL, individually, and JON M. VOGEL, individually,

Defendants.

STIPULATION OF DISMISSAL WITH PREJUDICE

The Plaintiff and the Defendants hereby file this Stipulation of Dismissal with Prejudice pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure.

Dwayne C. Pollard
Sheila M. Bradley
JOYCE AND POLLARD
515 South Main Mall, Suite 300
Tulsa, OK 74103
(918) 585-2751

ATTORNEYS FOR PLAINTIFF

J. Ronald Petrikin
Richard D. Koljack, Jr.
GABLE & GOTWALS
2000 Fourth National Bank Bldg.
Tulsa, Oklahoma 74119-5447
(918) 582-9201

ATTORNEYS FOR DEFENDANTS

RDK/12-91532/skb

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

TY LANE PETERSON and TAMARA RENE HARLAN,	)	
Plaintiffs,	)	
vs.	)	Case No.: 91 C 0073B
CITY OF BROKEN ARROW and MARCUS PETE FULTZ,	)	
Defendants.	)	

JOURNAL ENTRY OF JUDGMENT

COMES NOW, this matter before me, the undersigned Judge, pursuant to regular setting on the Petition and Answer of Plaintiffs and the Defendant herein and upon the Motion to Intervene filed by the Broken Arrow Municipal Authority, on the 3rd day of December, 1991. This matter also includes the subsequent personal appearance of Broken Arrow Municipal Authority, an Oklahoma Public Trust. I find the allegations in the Plaintiffs' Petition and the stipulation of the parties to support a judgment of liability for simple negligence as against

16

the City of Broken Arrow. I further find that the City is solvent in a constitutional sense, although unable to pay this judgment through unallocated funds, and requiring the payment through an assessment in accordance with the applicable law. Lastly, I find that the named individual defendants and other City employees, whether named or unnamed, are not liable to plaintiffs.

IT IS THEREFORE ordered, adjudged and decreed that the City of Broken Arrow is indebted to the Plaintiffs in the sum of seventeen thousand dollars ($17,000) and costs as a result of the simple negligence of the City of Broken Arrow, with resulting injuries to the Plaintiffs. This resolves all issues between the parties as of this date, including the issue of attorneys' fees. The Plaintiffs have assigned their judgment to the Broken Arrow Municipal Authority, a Public Trust, in full and complete sale and transfer of the Plaintiffs' rights. Judgment is therefore rendered in favor of the Broken Arrow Municipal Authority and against the City of Broken Arrow in the amount of seventeen thousand dollars ($17,000) plus costs of this action, together with interest at the statutory rate of ten percent (10%). Payment from the tax rolls shall be made over three (3) years.

Dated this 3rd day of December, 1991.

Judge of the District Court

Approved as to form:

Mark D. Lyons

Mark Lyons or Kevin Danielson
Attorney for Plaintiffs

Michael R. Vanderburg

Michael R. Vanderburg
Attorney for Defendant

S. M. Fallis, Jr.

S. M. Fallis, Jr., or Kirk Turner
Attorney for Defendant

John E. Dorman

John Dorman, Attorney for
Broken Arrow Municipal Authority

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing JOURNAL ENTRY OF JUDGMENT was mailed this _____ day of November, 1991 to: Mark D. Lyons, LYONS & CLARK, 616 S. Main, Suite 201, Tulsa, Oklahoma 74119 and S. M. Fallis, Jr., NICHOLS, WOLFE, STAMPER, NALLY & FALLIS, INC., 124 E. 4th Street, Tulsa, Oklahoma 74103 by depositing it in the U. S. Mail, postage pre-paid.

John E. Dorman

John E. Dorman

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WILLIE FOUST, III, deceased by and through his natural parents and next of kin, CHRISTINE FOUST (as mother and WILLIE FOUST, Jr., as his father and executor of the ESTATE OF WILLIE FOUST, III, deceased; and LENA SHAVERS, as the parent and next of friend of RENATA FOUST, a minor and daughter of the deceased,	)	FILED DEC 1991 Phil Lombardi, Clerk U.S. DISTRICT COURT
Plaintiffs,	)	
vs.	)	Case No. 91-C-0101-B
THE CITY OF MIDWEST CITY, GARY MAYNARD, individually and officially as head of Oklahoma's Department of Corrections and the OKLAHOMA DEPARTMENT OF CORRECTIONS, RON CHAMPION, individually and officially as Warden of the Conner Correctional Facility, and the CONNER CORRECTIONAL FACILITY,	)	
Defendants.	)	

J U D G M E N T

In accordance with the Order filed ~~November~~ Dec 3rd, 1991, sustaining the Defendants' Motion for Summary Judgment, the Court hereby enters judgment in favor of the Defendants, Gary Maynard, individually and officially as head of Oklahoma's Department of Corrections; the Oklahoma Department of Corrections; Ron Champion, individually and officially as Warden of the Conner Correctional Facility; and Conner Correctional Facility; and against the

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Plaintiffs, Willie Foust, III, deceased by and through his natural parents and next of kin; Christine Foust as mother and Willie Foust, Jr., as his father and executor of the Estate Of Willie Foust, III, deceased; and Lena Shavers, as the parent and next of friend of Renata Foust, a minor and daughter of the deceased. Plaintiffs shall take nothing on their claims against these Defendants. Costs are assessed against the Plaintiffs and each party is to pay its respective attorney's fees.

Dated this 2nd day of Dec November, 1991.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

WILLIE FOUST, III, deceased by and through his natural parents and next of kin, CHRISTINE FOUST (as mother and WILLIE FOUST, Jr., as his father and executor of the ESTATE OF WILLIE FOUST, III, deceased; and LENA SHAVERS, as the parent and next of friend of RENATA FOUST, a minor and daughter of the deceased,	)	
Plaintiffs,	)	
vs.	)	Case No. 91-C-0101-B ✓
THE CITY OF MIDWEST CITY, GARY MAYNARD, individually and officially as head of Oklahoma's Department of Corrections and the OKLAHOMA DEPARTMENT OF CORRECTIONS, RON CHAMPION, individually and officially as Warden of the Conner Correctional Facility, and the CONNER CORRECTIONAL FACILITY,	)	
Defendants.	)	

O R D E R

Before the Court for decision is the Motion for Summary Judgment filed on behalf of Defendants Gary Maynard, Ron Champion, Oklahoma Department of Corrections, and Conner Correctional Center (collectively, the "Defendants")[1] pursuant to Fed.R.Civ.P. 56. The

[1] The City of Midwest City is also a Defendant in this case but is not a party to this Motion for Summary Judgment.

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Defendants seek Summary Judgment against the Plaintiffs on their 42 U.S.C. §1983 action.

The Defendants filed their Motion for Summary Judgment on April 23, 1991, and raised the defense of qualified immunity. Once a qualified immunity defense is raised, the plaintiff is held to a heightened standard of pleading. Sawyer v. County of Creek, 908 F.2d 663,667 (10th Cir. 1990). On Oct. 9, 1991, the Court allowed the Plaintiffs to amend their complaint for the limited purpose of satisfying this heightened pleading requirement. Specifically, this Court stated:

> The Plaintiffs are allowed until October 23, 1991 to file any amended complaint to satisfy the heightened pleading requirements, if any, brought about by the qualified immunity defense.

The Plaintiffs filed an amended complaint on Oct. 22, 1991. In addition to attempting to satisfy the heightened pleading requirements, the Plaintiffs added a class action claim on behalf of all similarly situated "at risk prisoners and their family members." The Court did not grant the Plaintiffs the opportunity to amend their complaint for the purpose of adding claims. Therefore, Plaintiffs' putative attempt to plead a class action and obtain declaratory relief should and the same is herewith DISMISSED.

The Plaintiffs filed this §1983 action alleging Willie Foust, III, ("Foust") was fatally stabbed by a fellow inmate while incarcerated in the Conner Correctional Facility. Plaintiffs, Foust's parents and daughter, contend that Foust, an "informant", was killed as a result of the Defendants' failure to adequately protect him while he was in prison. The Plaintiffs filed suit

against Gary Maynard, individually and in his official capacity, Ron Champion, individually and in his official capacity, the Oklahoma Department of Corrections and the Conner Correctional Facility.

Plaintiffs summarily allege that the Defendants violated the Plaintiffs' Fourth, Fifth, Eighth and Fourteenth Amendment rights "by wantonly, obdurately discriminating and/or deliberate indifference to the defendants [sic] rights while acting under color of law, state authority, statute, custom, or usage, and pursuant to their authority." The Plaintiffs seek money damages to "redress and remedy the deprivations of their and the decedent's constitutional rights" pursuant to 42 U.S.C. §1983 and an award of attorney's fees and costs pursuant to 42 U.S.C. §1988.

Specifically, the Plaintiffs allege in their amended complaint that:

1) all Defendants were aware (or should have been aware) that Foust was an informant; and

2) prison officials owe a duty to informants "to not recklessly disregard their rights and to protect them from the general prison population ...."; and

3) defendants, either deliberately or in callous indifference to the rights of Foust, failed to create rules:

a) to protect Foust from the general population; and

b) to properly identify and segregate at risk prisoners; and

c) to inform at risk prisoners of the risks in prison and the right to be segregated; and

4) defendants violated the Plaintiffs' constitutional rights by not having adequate guards on duty and by failing to have working cameras; and

5) Foust was killed as a direct and proximate result of the deprivation of his rights.

The Defendants responded to the complaint by filing a Motion for Summary Judgment pursuant to Fed.R.Civ.P. 56. Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Windon Third Oil & Gas v. FDIC, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

> "The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant "must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

Claims Against State Defendants

The Defendants first argue that the Plaintiffs §1983 claim for money damages against the Department of Corrections, the Conner Correctional Center, Gary Maynard (Maynard), in his official capacity, and Ron Champion (Champion), in his official capacity, (collectively, the "State Defendants") is barred by the Eleventh Amendment.

A suit against Maynard and Champion in their official capacities is treated as a suit against the government entities of which they are an agent. Kentucky v. Graham, 473 U.S. 159,165-166 (1985). "The Court has held that, absent waiver by the State or valid congressional override, the Eleventh Amendment bars a damages action against a State in federal court." Id. at 169. In this case, the Court finds neither a waiver by the State of Oklahoma nor a congressional override.

The Plaintiffs correctly point out that States may be sued under civil rights statutes passed pursuant to §5 of the Fourteenth Amendment if states or state officials are included within the purview of law. Congress must make its intent to override the Eleventh Amendment immunity "unmistakably clear". Pennsylvania v. Union Gas Company, 490 U.S. 920 (1989). The Supreme Court has determined that Congress did not intend to abrogate the Eleventh Amendment and provide a cause of action against the states by the passage of 28 U.S.C. §1983. Quern v. Jordan, 440 U.S. 332 (1979). Only a "person" can be found liable under §1983. The Supreme Court recently addressed the issue of whether a state official sued in his or her official capacity is a "person" within the meaning of

the statute. Will v. Michigan Dept. of State Police, et. al., 491 U.S. 58 (1989).

> Obviously, state officials literally are persons. But a suit against a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office. Brandon v. Holt, 469 U.S. 464,471, 105 S.Ct. 873,877, 83 L.Ed.2d 878 (1985). As such, it is no different from a suit against the state itself.
> ...
> We hold that neither a state nor its officials acting in their official capacities are "persons" under §1983. Id. at 70-71.
> ...
> Congress, in passing §1983, had no intention to disturb the States' Eleventh Amendment immunity .... Id. at 66.

Thus, the Eleventh Amendment bars the Plaintiffs from recovering money damages against the state entities or the state officials acting in their official capacity. The Plaintiffs admit that the Eleventh Amendment protects the State Defendants from a suit for money damages but claim that all the Defendants are still proper parties to the lawsuit.

The Plaintiffs argue that the Defendants waived their Eleventh Amendment defense by not raising it in an answer.[2] A defendant may raise an affirmative defense by a motion for summary judgment when the motion for summary judgment is the initial pleading tendered by the defendant. Funding Systems Leasing Corp. v. Pugh, 530 F.2d 91,96 (5th Cir. 1976). Furthermore, an Eleventh Amendment defense is in the nature of a jurisdictional bar and need not be raised in the answer. Edelman v. Jordan, 415 U.S. 651,677-678 (1974)(citing

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[2] These Defendants' initial pleading was their Motion for Summary Judgment, no answer having yet been filed.

Ford Motor Co. v. Department of Treasury, 325 U.S. 450 (1945)). The Tenth Circuit has also recognized that the issue of immunity can be raised in a motion for summary judgment filed prior to an answer. Pueblo Neighborhood Health Centers, Inc. v. Losavio, 846 F.2d 642,646 (10th Cir. 1988).

The Plaintiffs also argue that all the Defendants are proper parties because the State Defendants may be held liable for attorney's fees pursuant to 28 U.S.C. §1988 if the state officials are found liable in their individual capacities.[3] The Supreme Court has made it perfectly clear such is not the case.

> [L]liability on the merits and responsibility for fees go hand in hand; where a defendant has not been prevailed against, either because of legal immunity or on the merits, §1988 does not authorize a fee award against the defendant.
>
> ...
>
> [I]t is clear that a suit against a government official in his or her personal capacity cannot lead to imposition of fee liability upon the governmental entity. Graham, 473 U.S. at 165-167.

The State Defendants have shown that there are no genuine issues of fact regarding their immunity defense under the Eleventh Amendment. The Plaintiffs have raised factual issues as to the incidents involved in the dispute but have not established genuine issues of material fact on the question of immunity. Therefore, the State Defendants Motion for Summary Judgment should be and the same is hereby GRANTED, being entitled thereto as a matter of law.

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[3] The Plaintiffs cite Hutto v. Finney, 437 U.S. 678 (1978), for this proposition. The Graham court specifically stated that "Hutto neither holds nor suggests that fees are available from a government entity simply because a government official has been prevailed against in his or her personal capacity." Graham, 473 U.S. at 171.

Claims Against State Officers In Their Individual Capacities

The only remaining claims[4] are those against Gary Maynard and Ron Champion ("Officials") in their individual capacities. Personal capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law. Id. at 165.

The Officials have raised the defense of qualified immunity. "Unlike other affirmative defenses, qualified immunity is not merely a defense to liability; it is also immunity from suit. Qualified immunity protects a defendant from discovery, trial, and other burdens of litigation. For this reason, prior to filing an affirmative defense, a defendant can challenge a complaint ... by filing a motion for summary judgment if the plaintiff has failed to come forward with facts or allegations that establish that the defendant has violated clearly established law." Sawyer, 908 F.2d at 665. "The court must then determine whether the complaint includes 'all the factual allegations necessary to sustain a conclusion that defendant violated clearly established law.'" Id. at 666 (quoting Powell v. Mikulecky, 891 F.2d 1454,1457 (10th Cir. 1989)).

Qualified immunity is an affirmative defense that shields government officials from personal liability unless their actions violate "clearly established statutory or constitutional rights of which a reasonable person would have known." Jones, 854 F.2d at 1208 (quoting Harlow v. Fitzgerald, 457 U.S. 800,818 (1982)). "The

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[4] The claim against The City of Midwest City is not addressed in this Order.

key to the inquiry is the 'objective reasonableness' of the official's conduct in light of the legal rules that were 'clearly established' at the time the action was taken." Melton v. City of Oklahoma City, 879 F.2d 706,727 (10th Cir. 1989)(quoting Harlow, 457 U.S. at 818).

A review of the case law indicates that the Court must follow a four-step analysis when the defendant raises the affirmative defense of qualified immunity in a §1983 action, which is:

1) Does the plaintiff have a clearly established right; if so,

2) Would a reasonable person in the defendant's position have been aware of this right; if so,

3) Did the defendant's actions violate the plaintiff's clearly established right; if so,

4) Would a reasonable person in the defendant's position understand that his actions violated the plaintiff's clearly established right.

To establish a prima facie case and survive a motion for summary judgment, the Plaintiffs must show that there is a genuine issue of material fact as to each of these four questions.

I.

The Plaintiff carries the initial burden of convincing the court that the law was clearly established. Lutz v. Weld County School Dist., 784 F.2d 340,342-43 (10th Cir. 1986). If the plaintiff fails to meet this burden, the court should enter judgment for the defendant. Id. The Plaintiffs in this case contend that Foust had an Eighth Amendment right to be protected from the

general prison population.

In Harris v. Maynard, 843 F.2d 414,416 (10th Cir. 1988), the Tenth Circuit addressed a motion for summary judgment in a §1983 case filed against prison officials for the death of an inmate. That Court initially determined that "a convicted prisoner has a constitutional right to be free from wanton and obdurate misconduct of corrections officials that proximately causes the prisoners death." Id. The Court also determined that this right was clearly established. Id.

II

The Court must next determine whether reasonable prison officials would have been aware of this clearly established right. Harlow, 457 U.S. at 818; Harris, 843 F.2d at 416. If the law was clearly established, it will be presumed that the defendant was aware of it "since a reasonably competent public official should know the law governing his conduct." Harlow, 457 U.S. at 818,819. The only exception to this rule is "if the official pleading the defense claims extraordinary circumstances and can prove that he neither knew nor should have known of the relevant legal standard." Id. 457 U.S. at 819. If such "extraordinary circumstances" are pled, the official's knowledge becomes a fact question. Lutz, 784 F.2d at 342.

The Officials in this case have not pled any lack of knowledge of Foust's right to be reasonably protected from attacks by other inmates and therefore, such knowledge will be presumed.

III

The next question is whether the plaintiff has alleged facts that would sustain a conclusion that the defendant violated a clearly established right. Pueblo Neighborhood, 847 F.2d at 646. This is an element of a prima facie case against a state official. Gullatte v. Potts, 654 F.2d 1007,1015 (5th Cir. 1981). To survive the Officials Motion for Summary Judgment, the Plaintiffs must at least establish that there is a material factual dispute as to this element. The question this Court is faced with, then, is whether the Officials actions in this case were wanton or obdurate and thus in violation of Foust's clearly established constitutional rights. Sawyer, 908 F.2d at 666; Pueblo Neighborhood, 847 F.2d at 645.

First, Plaintiffs allege that the Officials knew that Foust was an informant and consequently that he was in danger from other inmates but that the Officials did nothing to protect him. Clearly, if the Officials in this case knew that Foust was an informant and knew there was a substantial likelihood that he would be assaulted if he was placed in the general prison population but failed to take appropriate steps to protect him from that known danger, their inaction could be wanton, obdurate and in violation of Foust's clearly established rights. See Gullatte, 654 F.2d at 1012 (When officials are aware of a danger to an inmate's health and safety, ... it does violate the constitutional proscription against cruel and unusual punishment to fail to afford that inmate reasonable protection.) Prison officials are not immune under the Eighth or Fourteenth Amendments from suit for wrongful conduct that is intentional or for "deliberate indifference to the preservation of

the life in their care." Harris, 843 F.2d at 414; Miller v Solem, 728 F.2d 1020,1025 (8th Cir. 1984).

If the Officials can establish that "there is no material issue of fact regarding their objective good faith, then the court should not deny summary judgment merely because the plaintiff has alleged that the defendants maliciously intended to deprive him of his constitutional rights." Miller, 728 F.2d at 1025 (citing Harlow, 457 U.S. at 817-18). The Officials have submitted affidavits claiming to have had no knowledge that Foust had been an informant for any police department. They also contend that "Foust never informed any employee of [Conner Correctional Facility] that he was in fear for his life nor did he ever request any type of Protective Custody."[5] The Court will not accept the Plaintiffs' offer to infer that the Officials had subjective knowledge from the fact that Foust was checked out of the prison on two occasions to testify as a witness. The Plaintiffs have failed to demonstrate by counter-affidavit a factual dispute that the named Officials had any subjective knowledge that Foust was an informant or in danger from the prison population.

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[5] Plaintiffs allege in the Complaint that Foust "verbally expressed to all defendants, either individually or to their authorized agents, his concerns of going [to] prison ... after being a drug informant." However, the Plaintiffs seem to have backed off of this allegation in subsequent pleadings. In response to Defendant's Motion For Summary Judgment, the Plaintiffs claim to dispute the Defendant's assertion of lack of knowledge about Foust's "informant" status by simply stating "[Foust] was in fear of his life from the general prison population." The Plaintiffs also refer the Court to affidavits of Foust's parents but neither affidavit remotely indicates that the prison officials knew that Foust was an informant or that he feared for his life and wanted to be segregated from the general prison population.

"[I]t is clear that the imposition of liability in this context is not limited to only those situations in which the defendant had subjective knowledge of the risk of harm. Rather, liability may be imposed under certain circumstances in which the defendant has only objective knowledge of the risk of harm." Wilks v. Young, 897 F.2d 896,898 (7th Cir. 1990). The Plaintiffs allege therefore, in the alternative, that Maynard and Champion violated Foust's clearly established rights by failing to create and implement sufficient rules to protect, identify and warn informants. The Officials contend, and the Plaintiffs do not deny, that protective measures are available to any inmate that feels he is in danger and requests protective custody in writing.[6]

The question, then, is whether the Plaintiffs have set forth sufficient facts to conclude that the failure to create and implement rules that would affirmatively seek out and advise informants of their segregation rights was wanton and obdurate misconduct that violated Foust's right to be free from attacks by fellow inmates. If not, Maynard and Champion are entitled to summary judgment. The 10th Circuit has addressed similar questions in two recent cases.

In Blankenship v. Meachum, 840 F.2d 741 (10th Cir. 1988), an inmate was transferred from protective custody in one prison to the general population of another. The inmate brought a §1983 action

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[6] Plaintiffs do not contend that Foust ever requested protective custody from any agent of the state. They do contend that Foust was guaranteed protective custody by the Midwest City Police Department.

against prison officials after being assaulted by another inmate at the transferee prison. Id., 840 F.2d at 741. The Plaintiff admitted he did not request protective custody but alleged that the officials at the transferor prison and the transportation officer were aware of his protective custody status and the Defendants submitted a medical intake report which indicated that plaintiff was in protective custody status. Id. 840 F.2d at 742-743.

> The failure of prison officials to protect an inmate from attacks by other inmates may rise to the level of an Eighth Amendment violation. (citation omitted). "... [I]t is obduracy and wantonness, not inadvertence or error in good faith, that characterize the conduct prohibited by the Cruel and Unusual Punishments Clause." Whitley v. Albers, 475 U.S. 312,319, 106 S.Ct. 1078,1084, 89 L.Ed.2d 251 (1986). Id., 840 F.2d at 742.

The Court concluded that the Plaintiff had failed to show that any defendant acted in a wanton or obdurate manner and therefore affirmed the District Court's dismissal of the complaint. Id., 840 F.2d at 743.

In Harris, 843 F.2d 414 (10th Cir. 1988), the Court concluded that the unique facts of official misconduct alleged by the plaintiff and supported by affidavits were sufficiently serious[7]

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[7] The record in the case showed that: 1) the deceased plaintiff's mother made a number of phone calls to the defendant's offices informing them of her son's need for protection from other inmates, and 2) the mother spoke directly to one of the defendants and conveyed this need for protection, and 3) a "separtee order" had been issued, ordering the separation of the deceased from another inmate, and 4) the order was not enforced and the deceased was placed six cells away from the other inmate, and 5) the deceased was killed six weeks after the other inmate was placed in the same "quad unit", and 6) the mother had been denied access to the deceased's effects, including threatening letters from the other inmate, evidence that the deceased paid "protection" money, and her letters regarding efforts to secure protective custody.

and supported in the record to deny summary judgment (for the time being) and to allow discovery to proceed. Id., 843 F.2d at 418.

The Court finds the instant case to be factually on par with Blankenship and lacking in the unique facts and supporting affidavits found in Harris. The Plaintiffs have failed to allege sufficient facts from which the Court can infer "wantonness or obduracy" on the part of Maynard or Champion.[8] A policy of placing the responsibility on the inmate to request protective custody, standing alone, simply can not rise to the level necessary to establish a violation of Foust's constitutional rights by the correction officials. The Plaintiffs have failed to set forth sufficient facts to sustain a conclusion that the Officials violated a clearly established right, a material element of their case. This alone is a sufficient ground for granting summary judgment.

IV

The final question is whether a reasonable person in the defendant's position would understand that the defendant's actions violated the plaintiff's clearly established right. "The contours of the right must be sufficiently clear that a reasonable official would understand that what he is doing violates that right." Sawyer, 908 F.2d at 666. In Considine v. The Board of County Commissioners, 910 F.2d 695,702 (10th Cir 1990), the Court stated

[8] The Court does not consider the Plaintiff's conclusory allegation that the Officials violated Foust's rights "by not having adequate guards on duty" and "failing to have working cameras" sufficient to infer any bad faith on the part of Maynard or Champion.

"... the Supreme Court has made clear that to withhold qualified immunity, the unlawfulness of the 'very action in question' must be apparent. Anderson v Creighton, 483 U.S. 635,640 (1987)." Id. at fn.7.

This Court concludes that even if the Officials' actions were unlawful, it was not such that it would be apparent to a reasonable prison official in the position of the Defendants. A reasonable prison official would not have believed that the failure to create and implement rules that would affirmatively seek out and advise informants of their segregation rights violated Foust's right to be free from attacks by fellow inmates. Therefore, the officials are protected by qualified immunity. See Pueblo Neighborhood, 847 F.2d at 647.

For these reason, the Officials' Motion for Summary Judgment should be and the same is hereby GRANTED.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE
12/3/91

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DEC 3 91

MID-AMERICA FUEL COMPANY, a limited partnership,	)	
Plaintiff,	)	
vs.	)	Case No. 91-C-544-B
CHEROKEE ACQUISITIONS, INC. a/k/a WIL-GRO FERTILIZER, INC. a/k/a WILLARD GRAIN & FEED, INC.	)	
Defendant.	)	

O R D E R

This matter comes on for consideration of Plaintiff, Mid-America Fuel Company's (Mid-America) Motion To Remand.

Plaintiff filed this action in Tulsa County District Court, seeking Declaratory Judgment pursuant to 12 O.S. § 1651 regarding a contract for the sale of natural gas by and between it and Defendant Cherokee Acquisitions, Inc. a/k/a Wil-Gro Fertilizer, Inc. a/k/a Willard Grain & Feed, Inc., (Willard). In its Petition, Mid-America alleged it entered into a contract with Cherokee Acquisitions, on June 10, 1987, wherein Cherokee agreed to purchase 100% of its gas requirements from Mid-America for a period of ten years. The initial delivery date of gas was contingent upon the later of two prospective events, (1) completion of a gas connection or (2) termination of any Oklahoma Natural Gas gas contract made by Cherokee within 12 months of June 10, 1987. Willard acquired Cherokee and thereby the contractual obligation.

Mid-America further alleged Willard entered into a "2-3 year deal" gas contract with ONG which prevented Mid-America from supplying gas, causing Mid-America to suspend gas line connection efforts. Mid-America believes the Willard/ONG contract has now expired but is not privy to the actual terms of the Willard/ONG contract. Mid-America further alleged Willard refused to respond to inquiries from Mid-America regarding the status of the Mid-America/Willard gas purchase contract. Mid-America's prayer for relief asked the Court to "make a determination of the duties, rights and obligations of the parties in connection with the attached contract and to compel specific performance of the contract if needed."

No removal was effected by Willard within 30 days from the receipt of service of the state court petition which was filed March 13, 1991, thereby precluding removal to federal court as the matter then stood. 28 U.S.C. § 1446 (b).

On July 3, 1991, Mid-America filed its First Amended Petition For Declaratory Judgment And Damages For Breach Of Contract. In this pleading, Mid-America sought a Declaratory Judgment as to its rights under the gas contract and further sought, in a second Count, $8.8 million dollars in money damages, as follows:

COUNT II

> This action is for breach and repudiation of contract. Plaintiff has and will suffer $8,800,000.00 in money damages due to the repudiation, breach and wrongful conduct of the defendant described above.

PRAYER

> WHEREFOR, MAFCO (Mid-America) prays it have and receive judgment against the defendant for a sum of not less than $8,800,000.00, plus fees, costs and interest.

Willard filed its Notice of Removal on July 25, 1991, alleging the matter first became removable when Plaintiff filed its First Amended Petition seeking money damages; that theretofore, the absence of any money figure stated in the Petition precluded removal because of the lack of the jurisdictional amount, to-wit: $50,000.00, for diversity actions. See, 28 U.S.C. § 1332 (a).

In its Motion To Remand, Mid-America avers its First Amended Petition did not present a "new action" nor change or alter the disputed claim between the parties; that the second count for money damages was a result of Mid-America becoming aware that Willard fully intended to repudiate the contract, thereby inflicting injury upon Willard by reason of non-performance of the contract.

The issues then are: (1) was the matter removable within the 30 day window from and after service of the original Petition, notwithstanding the lack of any allegation as to a dollar amount? and, (2) did the amended petition add a "new action" or merely expand and extend the original dispute?

There are several methods to determine the amount in controversy in ascertaining diversity jurisdiction. The viewpoint of either party may be used to determine the amount in controversy. **Ronzio v. Denver & R.G.W.R. Co.**, 116 F.2d 604 (10th Cir.1940), citing **Smith v. Adams**, 130 U.S. 167. In **Ronzio** the Court stated:

> "In determining the matter in controversy, we may look to the object sought to be accomplished by the plaintiff's complaint; The

> test for determining the amount in controversy is the pecuniary result to either party which the judgment would directly produce." Ibid. at 606.

The cost of complying with a regulatory scheme was held to be a proper consideration in determining the amount in controversy in **Oklahoma Retail Grocers v. Wal-Mart Stores**, 605 F.2d 1155 (10th Cir.1979), citing **Gibbs v. Buck**, 307 U.S. 66 (1939). In **Wal-Mart** injunctive relief was sought, the Court viewing the costs of the injunction as a proper element for determining the jurisdictional amount.

It is not necessary to specifically state an amount in order that a case might be removable under diversity status. **Mielke v. Allstate Insurance Company**, 472 F.Supp. 851 (E.D.Mich.1979), citing **Horak v. Color Metal of Zurich, Switzerland**, 285 F.Supp. 603 (D.N.J.1968). In a suit for specific performance or for an injunction, it is the value of the right sought that is considered the amount in controversy. **Saul v. Metropolitan Life Ins. Co.**, 19 F.Supp. 1915 (1937).

The Court concludes this matter was originally removable based upon the obvious knowledge of Willard as to the intrinsic value of the gas purchase contract, or its avoidance, coupled with the allegations as set forth in the original Petition. The Court further concludes Mid-America's First Amended Petition was an extension of and expansion of the claim set forth in the original Petition and did not so change the nature of the action as to constitute a substantially new suit. **Jeffrey M. Goldberg and Associates v. Collins, Tuttle & Co.**, 739 F.Supp. 426

(N.D.Ill.1990). Thus, a new 30 day window within which to remove the action was not implicated. 28 U.S.C. § 1446 (b).

The Court concludes Mid-America's Motion To Remand should be and the same is hereby GRANTED.[1] Accordingly, this case is herewith REMANDED to the Tulsa County District Court where originally filed. No award of costs or attorneys fees is made herein.

IT IS SO ORDERED this 15th day of ~~November~~ Dec, 1991.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

[1] In view of the Court's conclusion herein, it does not reach any conclusion as to Plaintiff's argument that diversity among the parties does not exist. Mid-America argues that, notwithstanding Willard's corporate headquarters being located in Texas, Willard's principal place of business is in Pryor, Oklahoma, because that is Willard's only permanent manufacturing facility. Willard employs approximately 100 people in each Oklahoma and Texas. Defendant would have a heavy burden indeed to overcome such argument.

Entered

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

J. L. DIAMOND and GRETNA DIAMOND,	)	
Plaintiffs,	)	
vs.	)	No. 90-C-921-C
UNION BANK AND TRUST OF BARTLESVILLE, and FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity and as Liquidator of the assets of Union Bank and Trust of Bartlesville,	)	
Defendants,	)	
vs.	)	
TOM BERRY,	)	
Third-Party Defendant.	)	

ORDER

Before the Court is the motion of defendant Federal Deposit Insurance Corporation (FDIC) to tax attorney fees. On October 2, 1991, the Court entered judgment in favor of the FDIC against plaintiffs as to several notes and mortgages. FDIC now seeks fees, as provided by relevant statutes and the notes themselves. Plaintiffs have not responded to the motion. The Court has reviewed the supporting materials and finds the request to be reasonable.

It is the Order of the Court that the motion of the Federal Deposit Insurance Corporation to tax attorney fees is hereby granted in the amount of $27,543.19.

IT IS SO ORDERED this 29th day of November, 1991.

H. DALE COOK
Chief Judge, U. S. District Court

entered

FILED

DEC - 3 1991

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MAYNARD L. WILEY and VELMA L. WILEY, Plaintiffs, vs. TIME INSURANCE COMPANY, a corporation, ALBERT DARRELL SMITH, an individual, and PIEDMONT AMERICAN LIFE INSURANCE COMPANY, a Corporation. Defendants.	Case No. 91-C-125-B

ORDER OF DISMISSAL OF DEFENDANT, TIME INSURANCE COMPANY

The Court, having before it the written Stipulation for Dismissal of Defendant Time Insurance Company with Prejudice signed by Plaintiffs and Defendant Time Insurance Company, finds that based upon the agreement of the Plaintiffs and Defendant Time Insurance Company, the Stipulation for Dismissal of Defendant Time Insurance Company with prejudice should be granted, and

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the complaints, counterclaims, cross-complaints and causes of action of any type between Plaintiffs, Maynard L. Wiley and Velma L. Wiley, and Defendant, Time Insurance Company, only, should be and the same are hereby dismissed with prejudice to refiling.

IT IS SO ORDERED this 29th day of November, 1991.

THOMAS R. BRETT
Judge of the U.S. District Court

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AH:sam
10-18-91

IN THE UNITED STATES DISTRICT COURT FOR THE

NORTHERN DISTRICT OF OKLAHOMA

STATE FARM GENERAL INSURANCE COMPANY,	)	
Plaintiff,	)	
vs.	)	No. 89-C-871-C
URIAH ST. LEWIS and AMANDA ST. LEWIS,	)	
Defendants,	)	

JOURNAL ENTRY OF JUDGMENT

ON the 25th day of September, 1991, this cause of action came on for Trial in its regular order before jury citizens, who being duly empaneled and sworn, to well and truly try the issues joined between the plaintiff and defendants and a true verdict rendered according to the evidence; and having heard the evidence, the charges of the Court and argument of counsel upon their oaths say, to-wit:

Yes in favor of plaintiff State Farm General Insurance Company as the following claim or claims:

No Arson

Yes Concealment or fraud

DATED: October 9, 1991

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IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that judgment be entered in favor of the plaintiff and against the defendants. [redacted] TCL

CATHCART, GOFTON & FRALEY

W. R. CATHCART OBA 1566
2807 Classen Boulevard
Oklahoma City, Oklahoma 73106
Phone: 405-524-1110

W. C. SELLERS, INC.

TOM LANE
P. O. Box 1404
Sapulpa, Oklahoma 74067
Phone 918-224-5357

H. Dale Cook, Judge
U.S. District Judge

Entered

FILED

DEC -2 1991

RICHARD M. LAWRENCE, CLERK
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OK

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

GENERAL ACCIDENT INSURANCE COMPANY OF AMERICA, Plaintiff, vs. FIRST NATIONAL BANK AND TRUST COMPANY OF TULSA, a national banking association, as successor personal representative of the estate of F. PAUL THIEMAN, JR., deceased; and, NORMA APPLEGATE, successor trustee of the Gladys M. Thieman Trust, and F. Paul Thieman and Gladys M. Thieman Trust, Defendants.	)	No. 88-C-254-C

ORDER

Before the Court is the motion of defendant Norma Applegate to stay remaining claim. Plaintiff filed this declaratory judgment action requesting that it not be held liable for two claims Applegate had against an insurance policy issued by plaintiff.

Because of certain procedural and ripeness considerations, only one claim proceeded to trial before the Honorable Layn Phillips. Judge Phillips entered judgment against plaintiff, which has appealed the ruling. Defendant Applegate asks that the action be stayed as to the other claim pending appeal. Neither plaintiff nor co-defendant first National Bank and Trust Company of Tulsa objects to the motion.

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It is the Order of the Court that the motion of the defendant Norma Applegate to stay remaining claim is hereby granted. This action is stayed pending resolution of appeal.

IT IS SO ORDERED this 29th day of November, 1991.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

CIVIL NUMBER 91-C-787 B

-vs-

JAMES D. PINSON,
445 64 7626
Defendant,

JUDGMENT BY DEFAULT

Upon application of the Plaintiff, the Court, having examined the records and files in this cause, and being fully advised in the premises finds that service of process in manner and form provided by law was had upon the defendant, more than twenty days prior to this date.

And it further appearing to the court that the defendant has failed to appear, plead or answer, but has wholly made default, whereupon said defendant is adjudged in default.

And it further appearing to the court that the said plaintiff has filed an Affidavit pursuant to the Soldiers' and Sailors' Civil Relief act of 1940, as amended, and the court finds that the possibility of impairing any right thereunder of the defendant, is remote and that an order should be issued herein directing entry of judgment.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the plaintiff, United States of America, have and recover from the defendant, the sum of $639.50 ($639.50 principal, $0 as of May 31, 1991, with interest thereafter at the rate of 0% per annum until judgment and thereafter at the rate of 4.98 % until paid, and the costs of this action accrued and accruing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that this judgment be entered.

UNITED STATES DISTRICT JUDGE
11-29-95

APPROVED AS TO FORM:

CLIFTON R. BYRD
District Counsel

CLIFTON R. BYRD
Attorney
Department of Veterans Affairs
Office of District Counsel
125 South Main Street
Muskogee, OK 74401

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, Plaintiff,	}	
vs.	}	No. 85-CR-57-C
JOHN FRANCIS ROURKE, Defendant.	}	90-C-524-C

ORDER

This matter came before the Court on remand from the Tenth Circuit Court of Appeals[1] with instructions that this Court conduct an evidentiary hearing. On appeal defendant asserted:

> [H]e failed to challenge the accuracy of the presentence report at the time of sentencing because appellant was under the influence of strong psychotropic medication, administered by medical personnel at the jail, which rendered appellant unable to understand and meaningfully participate in the sentencing process. Appellant further asserted that he was similarly incapacitated at the time he entered his guilty plea to the charges underlying his sentence.

To support his assertions before the Tenth Circuit, Rourke submitted medical records from the jail documenting the administration of medication during the time in question; a pharmaceutical publication addressing the possible side effects of this medication; an affidavit of a medical doctor and personal friend who expressed his belief that this medication could have

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[1]Case Nos. 90-5092, 90-5129 and 90-5130, Order and Judgment entered on December 3, 1990.

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affected Rourke's competency; and an affidavit of family members attesting to personality changes in Rourke during the time of change of plea and sentencing. Rourke also asserted that the Assistant United States Attorney suggested to the Court prior to sentencing that Rourke be transferred to a federal prison hospital for treatment before the Court sentenced Rourke.

This Court appointed counsel for defendant and on November 13, 1991 conducted a full evidentiary hearing into the allegations raised on appeal. Defendant and his mother testified on his behalf. Defendant stated that during his stay in the county jail he was on medication prescribed by a physician as well as other drugs and marijuana that was smuggled into the jail. Defendant asserted that the effect of these drugs was that he was unable to make rational decisions.

Government's first witness was Keith Ward, the Assistant United States Attorney who handled defendant's case. Mr. Ward testified that he had spent "many hours" in the presence of the defendant on four to eight different occasions. In all his discussions with Rourke, Rourke appeared lucid and showed a keen ability to recall dates and times. Mr. Ward had numerous discussions with Rourke regarding the plea agreement. Rourke initially was resolved to contest the charges against him, but after his co-defendant Louis Stallings was found guilty on all charges contained in the indictment, Rourke indicated a change of attitude.

Government's second witness was Thomas A. Goodman, M.D. Dr. Goodman was the physician at Tulsa County Jail who prescribed medication to Rourke. Dr. Goodman recalled Rourke and identified him in open court. Dr. Goodman testified that he prescribed medication for Rourke on occasion and particularly in response to his complaints of nervousness and sleeplessness. Dr. Goodman testified that he prescribed one dosage of Haldol to Rourke on November 21, 1985 the day prior to his sentencing, in response to Rourke's complaints of extreme nervousness and inability to sleep. The dosage was to be given to him prior to retiring and no other was to be administered. Dr. Goodman testified that Haldol has a tranquilizing effect to calm the patient and allow him to sleep. One dosage lasts up to six or seven hours. Benadryl is prescribed to prevent side effects.

Dr. Goodman testified that he proscribed nothing to Rourke or knew of nothing Rourke was taking which would cause him to hallucinate. From Dr. Goodman's observations he testified that Rourke understood what he was doing, communicated well, was rational, coherent and functioned well among others. Dr. Goodman opined that Rourke had the capacity to assist his attorney.

Government's third witness was Martin Weber, a special agent with the Federal Bureau of Investigation in charge of Rourke's case. Mr. Weber testified that he spoke with Rourke on numerous occasions and that he had an extremely good memory and above

average intelligence. He was thoughtful and made conscious decisions.

Government's final witness was Dayton Wagner the United States Probation Officer who supervised Rourke. Mr. Wagner first had contact with Rourke in the late summer of 1984 when he assisted the United States Probation Office in the Northern District of Illinois in compiling their biographical investigation of Rourke. From January to March of 1985 Rourke reported to Mr. Wagner under the term of probation imposed on him in the Illinois case. In October of 1985 Rourke was confined in the Tulsa County Jail. Mr. Wagner visited Rourke there to review with him the biographical data contained in the presentence report arising out of his conviction in the Eastern District of Virginia.

The day prior to sentencing before this Court on November 22, 1985, Mr. Wagner meet with Rourke to review the presentence report. They went over the report page by page. Rourke commented that he did not like information concerning his parents, wife and children in the report but understood it was background information. He indicated the report was accurate. Mr. Wagner met with Rourke around 3:00 in the afternoon and at that time he had the capacity to intelligently discuss the report and ask reasonable questions. On the day of sentencing, Mr. Wagner was in the courtroom, observed Rourke and did not notice anything unusual about his appearance.

The Court also has independent recollection of the events which occurred on the date of Rourke's sentencing and change of

plea. No information was brought to the Court's attention that Rourke was under the influence of drugs. The Court observed Rourke's general appearance and his response to the questions posed. Rourke gave no indication of any mental incapacity. He was alert, bright, responsive, rational, and fully replied to questions. His presence and demeanor in the courtroom indicated he was an alert and rational individual.

There was no indication that Rourke had any mental incapacity. He was resolute and rational. The Court specifically asked him if he had a full opportunity to confer with his counsel and whether he was under the influence of any medication that would affect his judgment. Defendant responded that he had conferred with counsel, that he was pleased with his counsel's representation and was not under the influence of any medication.

Rourke entered into a highly advantageous plea agreement with government. The Court was advised of his cooperation and this fact was taken into consideration in formulating Rourke's sentence. The decision Rourke made was rational and indicated he was fully aware of the consequences of going to trial on the charges contained in the indictment. Rourke was sentenced following trial of Louis Stallings, his co-defendant, who was found guilty on all counts and sentenced to 75 years of incarceration without parole.

From the Court's observation at the time of the change of plea and sentencing and from the evidence received at the hearing on this matter, the Court finds that the defendant's mental capacity

was not affected by the medication prescribed to him by Dr. Goodman on November 21, 1991. Rourke fully understood the consequences of his conduct and the decision to enter into a plea agreement. The Court finds that Rourke was fully rational and mentally competent at both the plea and sentencing hearings. The Court therefore concludes defendant's claim is clearly without merit.

Accordingly defendant's motion for relief under 28 U.S.C §2255 is hereby denied.

IT IS SO ORDERED this 29th day of November, 1991.

H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MICHELLE R. LEAL,

Plaintiff,

-vs-

HERRERA MANAGEMENT, INCORPORATED, an Oklahoma Corporation, d/b/a Alfredo's Mexican Restaurants, and VIAUD JAIRO RIVERA, an individual,

Defendants.

Case No. 90-C-197-B

FILED

DEC 2 1991

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ORDER OF DISMISSAL

Now on this 2nd day of Dec., 1991, this matter comes on before the Court for consideration of the Plaintiff's dismissal with prejudice filed on August 2, 1991 and the parties' Joint Stipulation/Application for Order Dismissing Case filed on August 14, 1991. The Court finds that good cause exists to grant the Application for Order Dismissing this Case and that an Order of Dismissal should hereby be granted by the Court.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that the above styled case is Dismissed with Prejudice.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE